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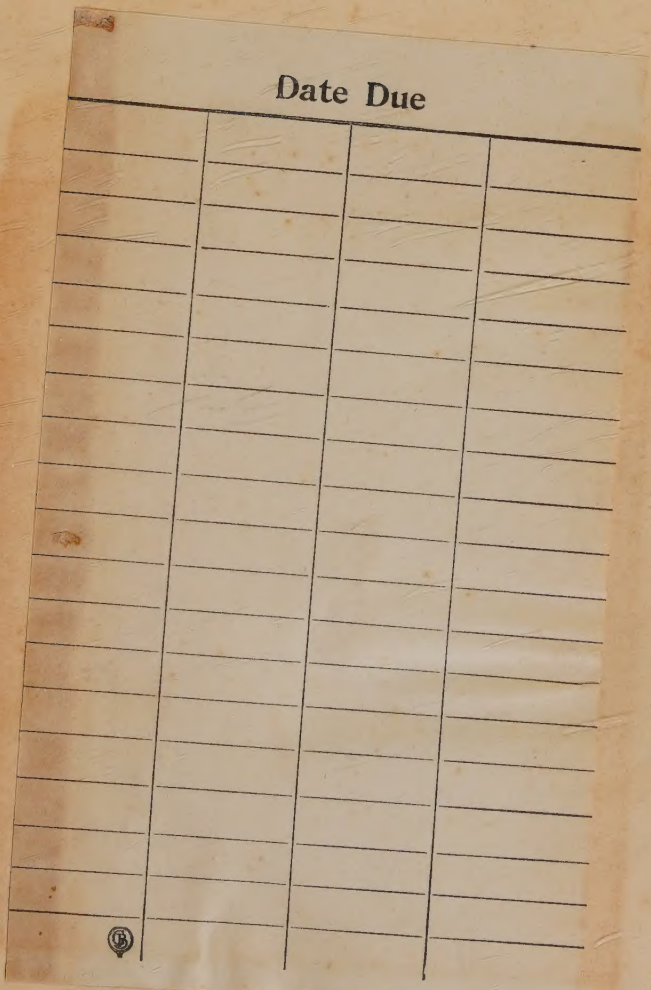

# THE GOVERNMENT OF THE UNITED STATES

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OF

# THE UNITED STATES

BY

W. J. COCKER, A.M.

*"Freedom and free institutions cannot long be maintained by any people who do not understand the nature of their own government"*

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# PREFACE.

In the preparation of this text-book for public schools, the author has aimed to present, as clearly and concisely as possible, the influences and conditions that rendered our present Constitution a necessity, and to describe, as fully as the limited character of a text-book of this kind will permit, the powers and limitations of our form of government. After briefly referring to the principles of government, the relations of the early colonies to the mother country and to each other are described, and the causes which led to occasional leagues for defence, and afterwards to a union of all the colonies in the War of Independence. The defects of the Confederation are pointed out, and the causes which necessitated a firmer union of the States, together with the difficulties encountered in forming a Constitution that would be acceptable to the several States. The adoption of the Constitution naturally follows. The provisions of the Constitution are then commented upon, the subject being compressed into as narrow limits as its importance will permit.

No effort is made to describe the State governments. The States differ so much in the number

and duties of their officers, in their laws, and in the management of their civil affairs, that it is impossible, in a few pages as a supplement to an elementary work on the national government, to describe satisfactorily the peculiarities of the local State governments. The federal Constitution is a subject so ample in its scope and so suggestive in its provisions that it is almost a presumption to attempt to treat it as it merits, within the allotted space of a single text-book.

In compiling material for this work, the author is especially indebted to Cooley's "Principles of Constitutional Law," Story's "Commentaries on the Constitution," Curtis's "History of the Constitution," Von Holst's "Constitutional Law of the United States," and Pomeroy's "Constitutional Law." For valuable suggestions, the author is greatly indebted to Professor Richard Hudson, Professor of History in the University of Michigan. Other authorities have been made use of, reference being freely made to such throughout the work. The references to numerous authors and the quotations from the best authorities will suggest a means of more extensive reading and research to those desiring additional information.

W. J. Cocker.

Adrian, Mich., *December*, 1888.

# CONTENTS.

"What constitutes a state?
Not high-raised battlement or labored mound,
Thick wall or moated gate;
Not cities proud with spires and turrets crowned;
Not bays and broad-armed ports,
Where, laughing at the storm, rich navies ride;
Nor starred and spangled courts,
Where low-browed baseness wafts perfume to pride
No: men—high-minded men,
With powers as far above dull brutes endued
In forest, brake, or den,
As beasts excel cold rocks and brambles rude;
Men, who their duties know,
But know their rights, and, knowing, dare maintain."

Sir William Jones.

# PRINCIPLES OF GOVERNMENT

## CHAPTER I.

### ON GOVERNMENT.

**Government Defined.**—The word government is derived from a Latin word (*gubernare*) meaning to steer, direct, control, and is usually defined as control. Mere control, however, does not constitute government. Something more is ~~needful.~~ needed Government is, more properly, control exercised with a view to the maintenance of order. In a political sense, government is the ruling power in a political society.

**Civil Government.**—When we speak of school government, we mean the control exercised by the teacher over the scholars. Church government is the control which the church exercises over its members. Civil government is the control exercised by the state over its citizens. So all government, whether relating to the school, the church, the family, or the state, includes the idea of a controlling and regulating power.

**Necessity of Government.**—It is impossible for any number of persons to dwell peaceably together for any length of time, without adopting certain regulations for their mutual guidance. If each member of a community were at liberty to act without any reference whatever to the rights or interests of others, lawlessness and anarchy would reign su-

preme. Self-interest, the tendency of the strong to tyrannize over the weak, the violence and injustice which at times prevail, render it necessary that there should be some power strong enough to administer justice, and to promote the happiness and welfare of all.

1. "No society can exist a week, no, not even an hour, without a government."—Guizot, "History of Civilization," vol. i., p. 108.

2. "Men knew that strifes and troubles would be endless, except they gave their common consent, all to be ordered by some whom they should agree upon."—Hooker's "Works," vol. i., p. 187.

**Forms of Government.**—All the various forms of government may be reduced to three classes:

1. The monarchical, or government by one person;
2. The aristocratic, or government by a few privileged persons;
3. The democratic, or government by all.

It is not to be supposed that each government is a pure and simple monarchy or aristocracy or democracy, the three forms being frequently found together; but, in a general sense, every form of government may be arranged under one of these three divisions, according to its predominating feature. It may, however, be more convenient to divide governments into six classes: patriarchal, theocratic, monarchical, aristocratic, democratic, and republican.

**Patriarchal Government.**—This is the earliest form of government of which we have any record. It

had its origin in the natural right of the parent to govern his children. The term patriarch was applied in early times to the father and ruler of a family. The word family is used not only in a restricted sense applying to one's household, but also in a more extended sense applying to the descendants from a common progenitor. In a patriarchal government, the eldest male parent was the absolute ruler of the family, having the power of life and death over his children. Their flocks and herds were his flocks and herds, and their houses and persons were as unqualifiedly his as his slaves were his. Abraham, Isaac, and Jacob were patriarchal rulers.

1. "They have neither assemblies for consultation nor laws, but every one exercises jurisdiction over his wives and his children, and they pay no regard to one another."—Homer, "The Odyssey."

2. "Communities began to exist wherever a family held together, instead of separating at the death of its patriarchal chieftain."—Pagehot, "Physics and Politics," p. 22.

**Theocratic Government.**—As the derivation of the word implies, a theocratic government is the government of a nation by God. The Supreme Being is regarded as the sole ruler, and the divine commands are received as the laws of the realm. The priests are the interpreters of the divine will, and act as the representatives of the invisible ruler. The government of the Hebrews, as established by Moses, is an example of a theocratic government.

**Monarchical Government.**—Monarchy means single power, the government of a single person. In a monarchical government, the controlling power is

in the hands of one person, who is the sole ruler of the people. In the earliest stages of society, kingly government, free from all control, supplied the only approach to any settled rule or order. It is only when an adequate amount of intelligence and knowledge are possessed by a people that free institutions are possible. Monarchies are either absolute or limited, elective or hereditary.

"Originally, the difficulty of obeying the wills of many different persons possessing authority, and not agreed as to the method of administration, led, in all probability, to the establishment of a monarchy." — Doran, "Encyclopædia Britannica," vol. xv. p. 411.

**Absolute or Limited Monarchy.**—An absolute monarchy is one in which the ruler has absolute control over his subjects. His will is the law of the land, and there are no constitutional limits to his powers. No department of government acts as a check on the exercise on his part of supreme authority. He makes laws for the government of his subjects, sees that his edicts are carried into execution, punishes any infringements of his authority, and is the sole judge of his own acts. It must not, however, be supposed that there are no checks to the caprice and lawlessness of absolute governments. In every state there are certain forces and influences that a despot cannot ignore. Even a tyrant cannot with safety to himself disregard established customs, attack with impunity cherished institutions, violently oppose the religious sentiments of a nation, or disregard entirely the rights of his subjects. The fear of revolution or of personal vi-

olence is a wholesome check to the lawlessness of despotic rulers. A limited monarchy is one in which the power of the monarch is limited by constitutional provisions, and held in check by other departments of government. In other words, the whole power of government is not vested in the chief executive, but certain portions are committed to specified departments, which mutually act as a check upon each other. China is an example of an absolute, and England of a limited, monarchy.

**Elective or Hereditary Monarchy.**—It is probable that most of the early kings were elected, and that their power was not transmitted to the members of their own family. Owing, however, to the natural desire of a ruler to secure the succession to his own family, and to perpetuate the family name, the hereditary principle was established, and certain families, for long periods of time, have had undisputed possession of kingly power.

**Aristocratic Government.**—An aristocratic government has already been defined as a government by a few privileged persons. The word aristocracy means etymologically the government of the best, the noblest. A few families, distinguished by birth and culture, and possessed of considerable wealth, together share the sovereignty and control the affairs of state. Kingly power, unable in some states to maintain itself against the combined resistance of a few families of noble descent, has passed into the hands of a privileged few. Aristocratic governments have been few in number, and usually short-lived. A body of nobles, jealous of one an-

other, and afraid that some one of their number may obtain a controlling influence in the administration of affairs, cannot act in concert for a long period of time. Factions spring up and destroy each other. Aristocracies, as a general rule, soon become democracies, or are merged into monarchies.

**Democratic Government.** — A democratic government is a government by the people. The supreme power is in their hands, and is directly exercised by them. In a pure democracy the people meet in general assembly to devise measures for the general good, and to make such laws as are necessary for their mutual protection and guidance. This is only possible in a small state. A democratic government is generally understood to be a government in which the sovereign power is in the hands of the people, whether exercised directly by themselves or through their agents or representatives.

**Republican Government.**—In a small state it is an easy matter for the citizens to meet together to legislate with reference to their common interests, but in a state including within its limits an extended territory this is impossible. It therefore becomes necessary for the people to select certain persons as their representatives, to do for them what they would do for themselves. These persons, as their agents, constitute the government, and act in their stead. A republic might be described as a representative democracy. A constitution and a system of representation are distinguishing features of a republic.

**Government of the United States.**—The government

of the United States is an example of a republican form of government. The sovereign power is in the hands of the people, and no authority can be exercised by any man, or any body of men, unless the people expressly confer such authority upon them. A constitution, adopted by the people, specifies the powers conferred upon the government. Representatives are periodically chosen to advise together for the general good. The powers of government are not vested in any one person, or even in a single body of men, but in three distinct and co-ordinate departments—the legislative, or law-making department; the executive, or law-executing department; the judicial, or judging department. The several departments act as a check upon each other.

**The Government Best Administered Said to be Best.**—It is doubtless true that all forms of government have answered in the main a good purpose, and when wisely administered have promoted the happiness and well-being of the people. Few, however, will be willing to accept Pope's saying:

> "The forms of government let fools contest,
> Whate'er is best administer'd is best."

History and experience have taught men that their liberties are never safe when subject to the absolute control of one or more persons. Sometimes, under the humane administration of a despotic ruler, the people have been contented and prosperous; at other times the selfishness and cruelty of a tyrant have brought misery and untold suffering on a whole nation.

"A government is to be judged by its action upon men and by its action upon things; by what it makes of the citizens and what it does for them; its tendency to improve or deteriorate the people themselves, and the goodness or badness of the work it performs for them, and by means of them."—Mill, "Representative Government," p. 43.

**The Best Form of Government.**—The government best fitted to promote the interests of any given society is one in which the whole people participate. Since it is impossible, except in small communities where all can meet together to discuss and decide questions of public interest, for all to participate personally in the transaction of public business, it follows that a representative government approaches more nearly to the type of a perfect government than any other. In such a government, citizens, either in person or through their representatives, have a voice in the administration of public affairs. When the citizen is called upon to take an actual part in local or general questions, he learns to stand up for his own interests, and at the same time to respect the rights of others, so that motives are constantly supplied for intelligent action and for the promotion of the general good. Whenever the people participate in the functions of government, a general improvement in their condition follows.

**Three Conditions Necessary.**—In order to secure permanency to any form of government, three conditions are necessary:

1. The people must be willing to accept it.
2. They must support and defend it.

3. They must be willing to perform the duties which it requires of them.

**Consent of the Governed.**—No government can long maintain itself unless there exists a willingness on the part of the people to submit to its authority, or at least not to oppose it. Though government is a necessity, and in the very nature of things must be established in every state, the form in which it is exercised is dependent upon the consent of the governed. True it is that open violence has at times ruled a nation, and that the government was nothing more nor less than mere brute force asserting itself, still the truth holds good that no government can long exist that is not "approved by the men upon whom it is to act." Only by addressing itself to the understanding and engaging the free-will of its subjects can a government attain the grand object for which Providence designed it.

**Support and Defence of Government.**—The love of country and the instinct of self-preservation naturally prompt men to defend their native land and hearthstones against the aggressions of foreign enemies. Unprincipled rulers have frequently taken advantage of this to provoke foreign powers to acts of aggression in order to divert attention from their own misrule, and perpetuate their ill-gotten powers in the enthusiasm of a national uprising. Whenever a country is threatened by a foreign foe, it has always had its loyal defenders, no matter how unworthy the government may have been of support. To defend and support the government, therefore, implies something more than to aid in repelling a

foreign foe. The loyal support of every good citizen is equally demanded in peace as in war. In wars wrongly waged by foreign powers, in civil commotions, in local disturbances, in the enforcement of the laws, in the maintenance of peace, and in the promotion of the general welfare, the duty of the citizen to aid the government is equally binding. This will be more likely to follow when the government has been established by the consent of the governed.

**Duties Required of Citizens.**—One of the unfortunate features of a republican form of government is the unwillingness of many to take an active part in the administration of public affairs. The demands of business, an unwillingness to be subject to unfair criticisms, the feeling that political life tends to blunt a man's moral sensibilities, make many very reluctant to accept public office, or even take part in the discussion of public questions. There is consequently great danger of important interests falling into the hands of incompetent or unscrupulous men, or of those who have private interests to promote. It would, indeed, be greatly to the advantage of good government if the office sought the man, and not the man the office; but, with the growth of the country in population and wealth, political offices are becoming more remunerative than formerly, and they are eagerly sought by unworthy men as a means of bettering their own fortune or to serve private or local interests. It is, therefore, the duty of all good citizens to be willing to perform their proper share of official

duties, even at some inconvenience to themselves. The influence of the government on the well-being of society is so great, the interests of all are so materially affected by the good or bad administration of the laws, that it is the bounden duty of each citizen to aid in every possible manner the promotion of the general welfare.

1. "Everybody should be made to aid in government."—Helps, "Thoughts upon Government," p. 2.

2. "How can institutions provide a good municipal administration if there exists such indifference to the subject that those who would administer honestly and capably cannot be induced to serve, and the duties are left to those who undertake them because they have some private interest to be promoted?"—Mill, "Representative Government," p. 38.

**Public Questions.**—In order to secure a healthy condition of public sentiment, it is needful that there should be the greatest freedom in the discussion of public questions. There will be but little progress under any form of government if common actions and common interests are not subjects of common discussion. Public questions, especially under a republican form of government, should always be discussed with freedom and decided with discretion. Whenever, after a full and free discussion, the will of the majority has been lawfully expressed, it is the duty of the minority to cheerfully acquiesce, until a change occurs in public opinion. This is the necessary price to be paid for a free government.

**An Enlightened Public Opinion.**—Intelligently to discuss and decide public questions requires a certain amount of general information. This, as a

general rule, can only be secured where educational advantages are within the reach of all. If the people are ignorant and governed by prejudice, an intelligent public opinion will be impossible. It is, therefore, the duty of the state to promote in every possible manner the enlightenment of the masses, and to provide generously for the education of its citizens. Intelligence and virtue can alone give permanency to free institutions. Ignorance tends inevitably to destroy the liberties of a people. Only when the people are surrounded by the atmosphere of an enlightened public opinion can free institutions flourish. As men improve in knowledge, the government will improve in point of excellence, and be less likely to go wrong.

1. "A widespread and sound education is indispensable to liberty."—Lieber, "Civil Liberty and Self-Government," p. 299.

2. "Meanwhile the sovereign States remain entire and undivisible,
And if that ignorance were removed which acts
Within the compass of the several shores
To breed commotion and disquietude,
Each might preserve the beautiful repose
Of heavenly bodies shining in their spheres;
The discipline of despotism is unknown
Amongst us, hence the more we need
The discipline of virtue. Order else
Cannot subsist, nor confidence, nor peace."

WILLIAM WORDSWORTH.

**Obligation to Vote.**—The right to vote is not simply a privilege to be used or not to be used, as one pleases, but when it is conferred every citizen is in duty bound to exercise it. No one can rightly excuse himself from performing his duty as an elector

by reason of the ordinary claims of business or the misrule of political parties. When the generality of electors are not sufficiently interested in their own government to give their votes, representative institutions are of little value.[1] A people governing themselves by free and universal suffrage, by neglecting to bestow their suffrages when occasion requires, jeopardize not only the interests of the state, but also their own private interests. Persons who are not willing to perform their obligations as electors have no right to complain when the government is unwisely administered, or when their property is injured by pernicious legislation. A free ballot and a constantly corrected public opinion are essential elements of good government.

"There are multitudes in countries where suffrage is unrestricted whose property is injured by misgovernment, and who are continually complaining of the state of things around them, who make no efforts, by use of their right of suffrage, to improve it. Either in despair or in selfish disregard of the public welfare, they stand aloof from politics, even when a political duty might not cost them half an hour's time once or twice a year."—Woolsey, "Political Science," vol i. p. 388.

**Importance of Caucuses.**—Not only is it the duty of the voter to exercise the right of suffrage when occasion requires, but, as political parties nominate persons for public office, and shape the policy of the government, it is also binding on him to attend his party caucuses. The lack of interest displayed by many in the primary meetings of the party to which they belong is a discouraging feature of our

[1] Mill, "Representative Government," p. 16.

political institutions, and it often happens that, by reason of the apathy of many and the intrigues and adroit combinations of a few, unworthy and incompetent men are selected as candidates for important offices. Government consists of the acts done by persons selected by political parties. If the agents, or the persons who choose them, are unprincipled, and seek only to promote their own private interests, good government is impossible. As the general standard of intelligence and integrity among public men is raised, the government will correspondingly improve in excellence. It is therefore the duty of every good citizen to attend primary meetings, and to see to it that honest and capable men are nominated for public offices.

**The Right of Revolution.** — Can there ever arise good and sufficient reasons for the overthrow of an established government? This is a serious question, and can be best answered in the words of the Declaration of Independence: "All men are created equal; they are endowed by their Creator with certain unalienable rights; among these are life, liberty, and the pursuit of happiness. To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. Whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will

dictate that governments long established should not be changed for light and transient causes; and accordingly all experience has shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security."

**The Importance of a Proper Knowledge of our own Government.**—In a country like our own, where the citizen may at any time be called upon to occupy important public positions and to exercise important powers, it is needful that he should have an intelligent knowledge of the principles upon which the government rests, and of the duties and powers of each department of government. The liberties of the people can only be preserved by a just appreciation of the rights and privileges of the citizen and of the powers and limitations of the government. How can the people pass an intelligent judgment upon the official acts of their representatives, or even make suitable selections for public offices, without a knowledge of the fundamental principles and the operations of the government? As the Constitution is the great charter of American liberty, every American citizen should, by personal knowledge, be able to judge for himself of its provisions, and not depend upon the opinions and prejudices of others for his information. Only by

so doing can he obtain a proper knowledge of the principles upon which our system of government is founded.

"There are few studies which would conduce more to human happiness than a thorough consideration of government —of its duties, its powers, its privileges, and especially of the limits which should be assigned to its interference."—Helps, "Thoughts upon Government," p. 1.

**Division of the Subject.**—The following is a brief outline of the plan followed in treating of this subject:

1. The government of the American colonies, and the relations of the colonies to each other;
2. The causes which led to a union of the colonies;
3. The Confederation and the causes of its failure;
4. Our present system of government under the Constitution.

# GROWTH OF NATIONAL AUTHORITY

## CHAPTER II.

### THE AMERICAN COLONIES.

**The Colonies.**—In order the better to understand the origin and object of the Constitution of the United States, a brief outline of the political organization of the American colonies is necessary. It must not be forgotten that the thirteen colonies, with but a few exceptions, were originally settled by British subjects, and that all were subject to the authority of the King of England. When North America was discovered by John Cabot and his son Sebastian, they took possession of the country in the name of Henry VII., the King of England. Territory thus acquired became the exclusive property of the crown. The King could retain it at his pleasure, or grant the whole or parts of it to others.

The colonies at first were under the control of the King, and Parliament had no right to interfere in their affairs. After the execution of Charles I., Parliament assumed the government of the colonies, and maintained that acts passed by them were binding on the colonies, in the same way as on the mother country.

**Government of the Colonies.**—Portions of this newly discovered territory the King retained under his exclusive control; other parts he granted to one or more persons, conferring upon them the right of the soil and the right of government. The result

was that there were three forms of government established in the colonies: provincial or royal, proprietary, and charter.

**Provincial Governments.**—Provincial or royal governments were those which were under the direct and immediate authority of the King. A governor and council were appointed by him, who held office during his pleasure. The governor was his representative. The council formed a part of the legislature, and also assisted the governor in the discharge of his public duties. Representatives selected by the freeholders or planters composed the lower house of the legislature, the council forming the upper house. The legislature could make laws regulating their local affairs, providing these laws did not conflict with the laws and customs of England. The governor exercised the general powers of an executive officer, appointed judges and other officers, and could defeat legislation by refusing to give his consent. Moreover, all legislation was subject to the approval of the King.

1. The government of the colonies was modelled after that of England.

2. At the commencement of the American Revolution, provincial governments existed in New Hampshire, New York, New Jersey, North Carolina, South Carolina, and Georgia. These colonies were governed as royal provinces.

**Proprietary Governments.** — Proprietary governments were those in which the crown granted to certain individuals, called the proprietaries, the ownership of the land and the right to govern it. For example, Charles II. granted to William Penn

the exclusive right to settle and govern the territory now included in the State of Pennsylvania. In accordance with this proprietary right, Penn appointed magistrates and organized a legislature. He was invested by the king with nearly the same authority as he himself possessed in the provincial governments. The crown gave him kingly power over this territory. Proprietary governments, then, differed from provincial governments in this, that they were under the direct control of proprietaries instead of the King. The King gave his rights and powers over a specified territory to others, these in turn gave certain rights to the inhabitants. The rights and powers granted by the King included the right of the soil, the collection of the revenues, and the general powers of government.

1. A colony might be dependent on one proprietary or on a small number of proprietaries.

2. At the time of the American Revolution there were only three proprietary governments: Pennsylvania and Delaware, held by William Penn as proprietary; Maryland, by Lord Baltimore.

**Charter Governments.** — Sometimes the King bestowed the right of the soil and the general powers of government upon a body of men, a corporation. The instrument by which these rights and privileges were conferred was called a charter. Connecticut, for example, was a charter government. Its charter conferred on the colonists unqualified power to govern themselves. They were allowed to elect all their own officers, to enact their own laws, to administer justice without appeals to Eng-

land, to inflict punishments, to confer pardons, and, in a word, to exercise every power, deliberative and active.[1] Charter governments were organized upon democratic principles, and were not bound by acts of the crown at variance with their charters. The attempt to change radically the charter of Massachusetts, because it had incurred the displeasure of the crown, was one of the causes which precipitated the war of the Revolution.

At the period of the Revolution there were three charter governments: Massachusetts, Rhode Island, and Connecticut. The second charter of Massachusetts (1691) vested the appointment of governor in the crown. In this respect it was similar to a provincial government. In Connecticut and Rhode Island, the governor and all other officers were chosen by the freemen of the colony.

**Distinction between these Forms of Government.**—There was a marked distinction between these three kinds of government—provincial, proprietary, and charter. Provincial governments were those that were subject to the direct control of the king. The governor as his representative appointed all judges and executive officers, and the people were entirely dependent on the pleasure of the crown. In proprietary governments, the powers exercised directly by the King were vested in one proprietary or in several. Officers were appointed, and executive powers were exercised, not by the King, but by one or more persons to whom he had delegated his rights and powers. Charter governments were great corporations possessing, by grants from the

[1] Bancroft, "History of the United States, vol. ii. p. 55.

King, all the powers of government—executive, legislative, and judicial. They selected their own officers, and, except in name, they were practically independent. In charter governments, the powers of government were exercised not by the King, neither by one or more persons to whom he had delegated his powers, but by the people themselves.

**Common Characteristics.** — Although the thirteen colonies differed in their political organization and special privileges, they were alike in the following particulars:

1. In each of them there was a governor, a council, and a representative assembly.
2. The citizens retained the right of electing their own representatives, and of being tried by juries of their own countrymen.
3. As British subjects they acknowledged the authority of the King, and conceded the right of Parliament to legislate with reference to their foreign affairs.
4. They claimed the rights and privileges of Englishmen, and especially the right to manage their local affairs, and to legislate with reference to their local interests. All local legislation was, however, subject to the restriction that it must, as far as possible, be agreeable to the laws and customs of England.
5. There was no political union between the several colonies, but they were independent of each other.

"The thirteen colonies had been founded in very different

times and under very different circumstances. Their whole course of development, their political institutions, their religious views and social relations, were so divergent, the one from the other, that it was easy to find more points of difference between them than of similarity and comparison."—Von Holst, "Constitutional History of the United States," vol. i. p. 2.

## CHAPTER III.

### CAUSES THAT LED TO THE AMERICAN REVOLUTION.

**Rights of the Colonies.**—The colonists maintained that they were entitled as British subjects to all the rights and privileges of Englishmen, and that in taking up their home in America, they and their descendants had not lost any of "the inherent rights and liberties of natural-born subjects of Great Britain." They claimed the benefit and protection of the common law of England, as far as it was applicable to their new surroundings and condition, and all the privileges and immunities granted and confirmed to them by royal charters. It is a well-settled doctrine of law, that, if an uninhabited country is discovered and planted by British subjects, the laws of England, so far as they are applicable, are there held immediately in force; for, in all such cases, the subjects, wherever they go, carry these laws with them.[1]

**The Common Law.**—The common law of England, claimed by the colonists as their birthright and inheritance, was that law by which proceedings and determinations in the King's ordinary courts of justice were guided and directed.[2] It included those

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[1] Story, "Commentaries on the Constitution," vol. i. p. 100.

[2] Blackstone, "Commentaries on the Laws of England," intro., p. 67.

principles, usages, and rules of action, applicable to the government and security of person and property, which did not rest for their authority upon any express and positive declaration of the will of the legislature.[1] It was the outgrowth of the habits, opinions, and wants of the people that had silently and almost insensibly controlled the course of business and the practice of the courts, and had been subject to such changes as the needs and improved condition of the people had from time to time required. It was not the product of the wisdom of one man, or society of men, in one age; but of the wisdom, counsel, experience, and observation of many ages of wise and observing men.[2] It is often designated as unwritten law to distinguish it from written or statute law, which owes its force and authority to acts of the legislature. Unwritten or common law has acquired its binding power and the force of laws in consequence of the common consent and immemorial practice of the people, sanctioned by judicial decisions, and not by reason of statutes now extant. The common law of England is the foundation of our jurisprudence in all the States, with the exception of Louisiana. Many of its principles have been embodied in the Constitution of the United States and in the constitutions of the States.

"In Louisiana the law of France, which is the Roman civil law with such modifications as obtained at the time of her purchase, is the foundation of her jurisprudence; for it is a

[1] Kent, "Commentaries on American Law," vol. i. p. 471.
[2] Hale, "Rolle's Abridgment," preface.

well-settled principle of international law, that whenever a country is conquered by or ceded to another, the law of that country, as it was at the time of its cession or conquest, remains until it is changed by its new master."—Sharswood.

**Rights Violated.**—Although the colonists as British subjects were entitled to all the rights and privileges of Englishmen, there was an unwillingness on the part of the parent country to respect these rights, and to protect the people in their exercise. The home government treated the settlers not as their equals, but as dependants on their bounty, and as entitled only to such rights as they were willing to grant. The misrule of the royal governors, the exactions of the proprietaries, the unjust navigation laws, which were framed for the benefit of English merchants and English manufacturers, at the expense of American commerce, the repeated violations of the rights of the colonists, alienated a people who gloried in being subjects of Great Britain, and finally brought about the American Revotion. Although there were many grounds for complaint among the colonists, the more immediate cause of the Revolution was the effort of Parliament to tax the colonies without their consent.

The colonists were obliged to sell their products in England, and they could buy foreign goods only in English markets. No merchandise could be carried to or from the colonies except in English ships. Iron works and other industries were prohibited.

**Taxation without Representation.**—It is one of the fundamental principles of English liberty that taxes are a free gift from the people, and that no taxes

can be imposed without their consent, given either in person or by their representatives. As the people of the colonies were not represented in Parliament, they stoutly maintained that an attempt to impose internal taxes of any kind whatever, without their consent, was an act of tyranny, and they resisted it as fatal to their liberties.

**Reasons Assigned for Taxing the Colonies.**—At the close of the long war between France and England which ended with the Peace of Paris and the loss to the French of Canada, the home government was plunged into debt, and it determined to tax the colonies, on the plea that they ought to bear their share of this burden. The proposed taxes were not in themselves oppressive; but the principle at stake was of such vital importance to the liberties of the people that the most serious alarm was excited, and the tax laws were obstinately resisted. The two tax laws that aroused special indignation were the Stamp Act and the tax on tea.

**The Stamp Act.**—The Stamp Act was a law requiring that all business documents should bear a government stamp, varying in price from six cents to fifty dollars, according to the importance of the document. Newspapers, pamphlets, almanacs, and even the advertisements which they contained, were also subject to this tax. So loud was the expression of public indignation that Parliament was compelled to repeal the Stamp Act, but it passed a bill declaring that Parliament had an unqualified right to impose taxes on the colonies. Afterwards new taxes were imposed on glass, paper, printers' mate-

rials, and tea; but the colonists again made such a vigorous resistance that the government, alarmed at their firmness, repealed all taxes except the tax on tea.

**The Tax on Tea.**—The English government made arrangements with the East India Company, which at that time brought all the tea from China, to sell this article in America for less than it could be bought in England, and it levied a tax of six cents a pound. "There must be one tax," said the King, "to keep up the right." It was thought that the Americans would not resist this tax, tea being by this arrangement even cheaper in America than in England, but this artifice exasperated them all the more. It was not so much the money to be paid, that excited such remonstrance, as the principle involved. The people of Boston resolved not to allow any tea to be landed, for fear that if it should be sold, the precedent for the collection of such taxes would be established. Tea was denounced as a "pernicious weed," and all persons who might henceforth be concerned in its importation were declared enemies to their country.[1] The open and violent resistance to this tax on the part of the colonies, and the retaliatory measures adopted by the home government, finally culminated in a resort to arms and the establishment of an independent government.

**Declaration of Independence.**—Although the American Revolution really commenced with the battle

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[1] Hildreth, "History of the United States," vol. iii. p. 29.

of Lexington, the people did not seriously contemplate a permanent severance of their relations with the mother country till more than a year after the commencement of hostilities. When, however, it became evident that a proper adjustment of difficulties was impossible, delegates from the colonies, in congress assembled, "Resolved, That these United Colonies are, and of right ought to be, free and independent States." Two days afterwards, on the fourth of July, 1776, the Declaration of Independence was formally adopted, and the colonies were declared to be "absolved from all allegiance to the British crown."

When the thirteen colonies declared themselves free and independent States, the colonial charters naturally became the State constitutions. Before the close of the war, all the States, with the exception of Connecticut and Rhode Island, adopted new constitutions. These two States carried on their governments under their old royal charters, Connecticut till 1818, Rhode Island till 1842.

## CHAPTER IV.

### THE CONFEDERATION.

**Relation of the Colonies to Each Other.**—At the commencement of the American Revolution there was no political union between the thirteen colonies. They were entirely independent of each other. The attachment of each of the colonies to its own individual liberties was strong enough to keep them in the condition of separate States. Still there were certain affinities that had a tendency to unite them. They were of English origin, they owed a common allegiance to Great Britain, they claimed in common the rights and privileges of British subjects. In the French and Indian wars, they fought together for mutual protection, and for the honor of the mother country. All this naturally made a union of the colonies possible.

**Attempts at Union.**—As far back as 1643, the four New England colonies, Massachusetts, Plymouth, Connecticut, and New Haven, formed a league for self-defence and the common welfare. This lasted for about forty years. The horrible massacre of men, women, and children by the French and Indians at Schenectady, in 1690, was the occasion of the first call for a general congress in America. In 1754, delegates from six or seven colonies met in Albany to concert measures for defence against

the French and Indians, and to treat with the Indian tribes called the Six Nations. America had never seen an assembly so venerable for the States that were represented, or for the great and able men who composed it.[1] The fear of invasions from the French and Indians suggested and seemed to render necessary some form of confederation, and "every voice declared a union of all the colonies to be absolutely necessary." The plan proposed was for the government of each colony to remain as it was, and for all the colonies to be united under one federal government. A president-general was to be appointed by the King, and a congress elected by the people, the authority of the crown being exerted through the president-general, and that of the people through congress. This plan did not prove acceptable either to the English government or to the colonies. The King opposed it because he feared that it would make the colonies too strong. The colonies, fearing for their individual liberties, rejected it because it gave too much power to the president-general. The author of this plan was Benjamin Franklin, and he was its warmest supporter. If the plan had been adopted, it might possibly have put off for many years the American Revolution, and perhaps have avoided it altogether.

**The Stamp Act Congress.**—After the passage of the Stamp Act, delegates were appointed by nine of the colonies, to consult "on the difficulties in

[1] Bancroft, "History of the United States," vol. iv. p. 122.

which the colonies were and must be placed by the late acts of Parliament levying duties and taxes upon them," and to agree upon some plan of action. They met in New York, and in the course of a three weeks' session passed resolutions setting forth their rights and grievances, and prepared a petition to the King, together with a memorial to each House of Parliament. These occasional meetings of delegates from the several colonies to concert plans for mutual protection, and for the maintenance of common interests and rights, prepared the way for a union of all the States. It needed only the American Revolution to bind the colonies together, and to prepare the way for the establishment of a national government.

**The First Continental Congress.**—When the English government determined to impose a tax on tea, in order "to maintain the right," and endeavored to force a quantity of the obnoxious article upon the colonies, thinking that if it were once landed and offered for sale, it would soon find its way into general use, the attempt met with most earnest remonstrance from the several legislatures, and the effort to land some of the tea at Boston encountered open and violent resistance. This so exasperated the home government that it closed the port of Boston against commerce, and sent troops to intimidate the inhabitants. Finding that remonstrance and resistance on the part of individual colonies were of no avail, and realizing that combined resistance alone would prove successful, delegates were chosen from the several colonies, at the suggestion of

Massachusetts, to meet at Philadelphia, in order to deliberate with reference to the common good, and adopt some general plan for future operations. This memorable congress met on the fifth day of September, 1774, and is known as the First Continental Congress. It consisted of leading men from twelve of the provinces. Four important steps were taken :

1. A declaration of rights was adopted.
2. An agreement was drawn up pledging the colonies to have no commercial relations with England till the obnoxious acts of Parliament were repealed. This agreement was embodied in what is known as the Articles of Association.
3. The grievances of the colonies were reiterated in a petition to the King and in an address to the people of Great Britain.
4. Provision was made for another congress to meet, unless these grievances were redressed.

It will be seen that more decided measures were adopted by the First Continental Congress than by the Stamp Act Congress. The latter merely declared the rights and grievances of the colonies; the former not only did this, but also agreed upon fourteen Articles of Association as the basis of an American Association, and made provision for a second congress to assemble if the grievances complained of were not redressed. Thus another important step was taken towards the formation of a permanent union.

The session lasted eight weeks. There were fifty-three delegates, each colony having only one vote, no matter how many delegates it had. This method of voting was followed until the adoption of the Constitution.

**The Second Continental Congress.**—The Second Continental Congress met in May, 1775, immediately after the battles of Lexington and Concord. The First Continental Congress claimed no political power, but this Congress immediately entered upon the exercise of comprehensive authority, and assumed supreme direction of the War of Independence. After the Declaration of Independence, it constituted to all intents and purposes the national government, till near the close of the Revolution, when the Articles of Confederation were adopted. As the Continental Congress was organized by a voluntary association of the colonies to resist the unjust demands of England, and to concert measures for common defence, the powers that it exercised were granted by tacit consent. Whatever was done received the support of the several colonies, although it had no legal or binding force, the powers of the congressional government not being defined. The union was a union of defence primarily, and at the close of the war, unless some plan of confederation should be agreed upon, the powers tacitly conferred upon the Continental Congress would naturally cease and the colonies would separate into independent States. To avert this danger Articles of Confederation were prepared by Congress, and submitted to the States for their adoption.

**Articles of Confederation.** — Immediately after the Declaration of Independence, steps were taken to form a permanent union of all the colonies under one general government. After much discussion and delay, a plan of confederation was submitted to the States for their approval. Owing to various objections on the part of some of the States, the Articles of Confederation were not adopted till 1781. The experience of the colonies with the home government had been such that they feared to yield any extensive powers to a central government. There was a disposition to delegate as little authority as possible. To determine, therefore, the relative powers of Congress and the States, and to fix the terms and conditions of the confederation, was a matter of no little importance and of equal difficulty.[1] There were three principal points of controversy:

1. As to the mode of voting in Congress, whether by States or according to wealth and population;
2. As to the basis according to which troops should be raised and taxes apportioned;
3. As to the disposition of the vacant lands in the West.[1]

A common danger, and the necessity of adopting some general plan for mutual protection, led the States to make such concessions that finally the Articles of Confederation were ratified by all the States.

[1] Hildreth, "History of the United States," vol. iii. pp. 395, 397.

**Distinctive Features of the Confederation.**—The Confederation was a league of friendship between free and independent States. It was established mainly for the purpose of defence, the States severally binding themselves to assist each other against all external attacks. The following is a brief outline of the government established by the Articles of Confederation:

1. The Congress consisted of but one house, which exercised not only legislative but also executive and judicial functions. There was no chief executive and no national judiciary.
2. It had certain powers relating to peace and war, foreign intercourse, establishing post-offices, coining and borrowing money, etc.; but the assent of nine States was required in all important matters, and the consent of all the legislatures, for any constitutional change.
3. Delegates were appointed annually, in such manner as the legislature of each State directed, and they were maintained by their own States.
4. Each State was represented by not less than two nor more than seven delegates, and had but one vote.
5. Authority was vested in Congress to appoint an executive committee, composed of one delegate from each State, to sit during the recess of that body, and execute such powers of Congress as, with

> the consent of nine States, it might from time to time think expedient to vest them with.

The large vote required for all important matters frequently made it impossible to legislate at all, delegates from nine States rarely being present at one time, so that Congress was forced again and again to adjourn for want of a quorum. At three different times, amendments to the Articles of Confederation were proposed by Congress, but although they each time received the assent of twelve States, they were rejected by the vote of one State.

The plan of voting by States was continued under the Articles of Confederation, not only on account of the impossibility of properly ascertaining the relative importance of each colony, but because some of the States refused to enter the Confederation except upon terms of full equality.

**Defects of the Confederation.**—Under the Articles of Confederation, Congress was the mere agent of a league of States, not a national government with citizens bound to obey its commands. Hence when money was needed, Congress, instead of imposing taxes, made requisitions on the States, which the State legislatures granted or withheld according to their own convenience and pleasure. When troops were needed, Congress had to ask each State to furnish its quota. Congress could do but little else than recommend measures which could be carried into effect only by the voluntary action of the states.

"By this political compact the United States in Congress have exclusive power for the following purposes, without be-

ing able to execute one of them. They may make and conclude treaties, but can only recommend the observance of them. They may appoint ambassadors, but cannot defray the expenses of their tables. They may borrow money in their own name on the faith of the Union, but cannot pay a dollar. They may coin money, but they cannot purchase an ounce of bullion. They may make war and determine what number of troops are necessary, but cannot raise a single soldier. *In short, they may declare everything and do nothing.*"—"American Museum," vol. i. p. 270.

## CHAPTER V.

### CONSTITUTIONAL GOVERNMENT.

**Government must Possess the Means of Enforcing Obedience.**—Government has already been defined as control. Control necessarily implies obedience. Obedience can only be secured by a power that is able to enforce its commands. It will be readily seen that it is essential to all government to have the means at its disposal of compelling obedience to its decrees. Without this, no government can exist for any length of time.

1. "Every government ought to possess the means of executing its own provisions by its own authority."—Hamilton, "The Federalist," p. 590.

2. "Obedience is what makes government, and not the names by which it is called."—Burke, speech on "Conciliation with America."

**Disregard of National Authority under the Confederation.**—Although the Confederation had many serious defects, its greatest weakness was its lack of all coercive power. It was unable to compel individuals to conform to its enactments. After the close of the Revolutionary War, national affairs became hopelessly involved. The States neglected and even refused to comply with the requisitions of Congress for funds to meet pressing necessities.

The obligations of the government to those who fought in its defence were unfulfilled, the interest on the public debt was unpaid, and treaties were openly violated. The States having seaports taxed the people of sister States trading through them. To add to the demoralization of the times, Congress was unable to protect the interests of American commerce, and Great Britain, smarting under the defeat of its arms in America, took advantage of the dissensions of the States and the feebleness of the national government to exclude American ships from their accustomed traffic with the British West Indies, and to restrict them even in the direct trade with English ports, so that all branches of industry suffered greatly. The government was powerless to make its authority either feared at home or respected abroad. This state of affairs showed clearly that the Union could not long exist, unless there was lodged somewhere a power strong enough to pervade the whole Union and to enforce obedience.

**Inadequacy of the Confederation.**—Not long after the adoption of the Articles of Confederation it became evident that they contained so many serious defects that, unless some radical changes were made, a speedy dissolution of the Union was inevitable. Thoughtful men began to see that if the United States were to exist as a nation, there must be a central government with direct power both in internal and external affairs, able to carry on foreign negotiations in the name of the nation, to issue commands to the citizens of the state, and to

enforce these commands, if necessary, and to punish those who neglected them.[1]

**Benefits Secured by the Confederation.**—The Confederation, notwithstanding its many defects, was of extended benefit, for the following reasons:

1. It met the pressing wants of the Union, and thus strengthened it.
2. It conferred a great educational service through the experience of its defects.
3. It carried the nation along until a more efficient system was provided.[2]

This service alone entitles the Articles of Confederation to the respectful recollection of the American people, and its framers to their gratitude.[3]

**Convention Recommended.**—All efforts to strengthen the government under the Articles of Confederation, by providing Congress with a permanent revenue from customs, failed. The plans submitted to the States by Congress for this purpose were rejected. In 1786, the legislature of Virginia proposed to the several States that commissioners be appointed to meet in convention to consider the means of establishing a uniform system of commercial relations. The convention met at Annapolis. As only five States were represented, the convention adjourned after recommending to Congress and to the several States the appointment of commissioners from all the States to meet at Philadel-

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[1] Doyle, "History of the United States," p. 282.

[2] Frothingham, "Rise of the Republic of the United States," p. 579.

[3] Marshall, "Life of Washington," vol. iv. p. 416.

phia, to devise such measures as might appear necessary "to render the Constitution of the federal government adequate to the exigencies of the Union." As Congress had failed to find ways and means to carry on the government, it coincided with the suggestion of the Annapolis convention, and recommended to the several legislatures to send delegates to the proposed convention, for the purpose of revising the Articles of Confederation, and of reporting to Congress and the several legislatures the result of their deliberations. Delegates were appointed by all the States with the exception of Rhode Island. Although the time designated for the convention to meet was the fourteenth of May, it was not till the twenty-fifth that a sufficient number of States were present to complete the organization of the convention.

"Rhode Island, small in territory and in numbers, but favorably situated for the pursuits of commerce, had strenuously resisted every effort to enlarge the powers of the Union. Ever since the Declaration of Independence, the people of that State had clung to the opportunity, afforded by their situation, of taxing the contiguous States, through their consumption of commodities brought into its numerous and convenient ports."—Curtis, "History of the Constitution," vol. ii. p. 24.

**The Constitutional Convention.**—The States in selecting delegates chose their most illustrious citizens, men distinguished for their talents and public services, who "were identified with the heroic and wise counsels of the Revolution." Washington was chosen president. Although the convention was assembled for the purpose of merely revising the Articles of Confederation, it was determined,

after full consideration, that amendments to or alterations in the existing Articles would be wholly inadequate to the needs of the United States, and that an entirely new and stronger government ought to be established. After a long and at times bitter discussion, the present Constitution was framed, as the result of a spirit of amity and of mutual difference and concession,[1] and it was provided that the ratification of the conventions of nine States should be sufficient for the establishment of the Constitution, between the States so ratifying the same. To have required a unanimous adoption would have been fatal to the new Constitution, as it had been to amendments to the Articles of Confederation. The usage under the Confederation of requiring the assent of nine States to all questions of importance was followed. It took the convention nearly four months to complete its labors. Its sessions were held with closed doors, the members were solemnly pledged to secrecy, and for many years what took place in the convention was not fully known.

"The delegates were assuredly a most remarkable body of men. Hardly one among them but had sat in some famous assembly, had signed some famous document, had filled some high place, or had made himself conspicuous for learning, for scholarship, or for signal services rendered in the cause of liberty. One had framed the Albany plan of union, some had been members of the Stamp Act Congress of 1763, the names of others appear at the foot of the Declaration of Independence and at the foot of the Articles of Confederation; two

[1] See "Address of the Constitutional Convention to Congress."

had been presidents of Congress; seven had been, or were then, governors of States; twenty-eight had been members of Congress; one had commanded the armies of the United States; another had been superintendent of finance; a third had repeatedly been sent on important missions to England, and had long been minister to France."—McMaster, *The Century*, September, 1887.

**Dissensions in the Convention.**—At the very outset grave and serious difficulties were encountered. Some of the delegates favored a national form of government that would completely override the State governments, while others were opposed to anything that would tend to weaken State sovereignty. How to adjust the interests and rivalries of large and small States, free and slave, agricultural and commercial, was a labor of exceeding delicacy and very great difficulty. Even Washington said he almost despaired of seeing a favorable issue of the proceedings, and therefore repented having any agency in the business.[1] Franklin became so alarmed at the state of feeling exhibited in the convention that he arose and proposed henceforth the sessions should be opened with prayer, for now there was no hope of help except from Heaven; the wit of man was exhausted.[2] Finally, better counsels prevailed, and by mutual concessions, in spite of great diversity of opinion, the present Constitution of the United States received the signature of nearly all the delegates. Only a lofty patriotism and a strong sense of the evils from which the nation was suffer-

[1] A letter to Hamilton, July 10, 1787.
[2] Elliot, "Debates," vol. v. p. 254.

ing and of the dangers of its present condition could have led the different parties to make such sacrifices of their own wishes as were needful.[1]

1. "It appears to me little short of a miracle that the delegates from so many States, differing from each other in their manners, circumstances, and prejudices, should unite in forming a system of national government so little liable to well-founded objections."—Washington.

2. "Of those who signed, probably there was not one to whom all the provisions of the instrument were satisfactory; but gradually matured as it had been, in a four months' discussion, by a compromise of contending interests and opinions, it was accepted as the best that circumstances admitted, and as promising, on the whole, an improvement on the old confederation."—Hildreth, "History of the United States," vol. iii. p. 526.

**Adoption of the Constitution.**—After the Constitution was framed and transmitted to Congress, it was submitted to the States for their adoption or rejection. Conventions composed of delegates chosen by the people were held in each State to consider and pass upon its provisions. After long debates and many warm discussions, and in the face of much opposition, it was ratified by the necessary number of States, and the event was celebrated all over the country with bonfires, processions, and loud rejoicings, such as had never before been witnessed in America. As the Constitution was adopted by the people through their delegates, it is very properly declared in the Preamble, "We, the people of the United States . . . . do ordain and establish this Constitution for the United States of America." Thus was achieved one of the grandest

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Doyle, "History of the United States," p. 286.

triumphs in the history of a free people. It has been truly said that we owe a debt of gratitude to those great men who thus framed the Constitution and secured its adoption.

1. The Constitution of the United States has been pronounced by Gladstone to be "the most wonderful work ever struck off at a given time by the brain and purpose of man."

2. "The Constitution in its words is plain and intelligible, and is meant for the homebred, unsophisticated understandings of our fellow-citizens."—Dallas.

**Opposition to the Adoption of the Constitution.**—The adoption of the Constitution was vigorously opposed in many of the States, and some of its provisions were bitterly assailed. North Carolina and Rhode Island held aloof from the Union till assured of its success. Some of the other States came in very reluctantly. Pamphlets, newspapers, and publications of various kinds were scattered in every direction, denouncing certain features of the instrument. Objections were made to members of Congress voting as individuals and not by States; to the salaries of congressmen being paid out of the national treasury, thus rendering them independent of their own constituents; to an oath of allegiance to the national government; to so long a period as two years for the term of office of representatives; to no religious tests being required for office; to the maintenance of a standing army; to Congress having uncontrolled jurisdiction over a district ten miles square as the seat of the national government. One delegate said he would not object to the Constitution, if the district was only

one mile square. But the great objection was the omission of a bill of rights. Moreover, the distinguished men who assisted in framing the Constitution were derided. Washington was declared in one paper to be a born fool, and Hamilton and Madison were called mere boys. Franklin was said to be in his second childhood, while others were called visionary young men. The Constitution was designated a "triple-headed monster," and pronounced to be "as deep and wicked a conspiracy as was ever invented in the darkest ages against the liberties of a free people." A most remarkable series of essays, in support of the Constitution against the various objections urged to it, appeared in a New York journal, the *Independent Gazetteer*, and were everywhere republished in the public journals. These essays were written by Hamilton, Madison, and Jay, most of them however being contributed by Hamilton. Nothing published at that time was so widely read and so effectively contributed to the adoption of the Constitution. They were afterwards published in collected form, and are now familiarly known as the "Federalist," one of the most famous and suggestive treatises on government that has ever been published. Madison was the principal author of the Constitution; Hamilton, its most brilliant advocate; Jay, a distinguished statesman and jurist. Those who supported the Constitution were known as Federalists, those who were opposed as Anti-Federalists. In some of the cities, so bitter was the feeling between the two parties that serious riots occurred.

"In Providence the Federalists prepared a barbecue of oxen roasted whole, but a mob of farmers, led by three members of the State legislature, attempted to disperse them, and were with some difficulty pacified. In Albany the Anti-Federalists publicly burned the Constitution, whereupon a party of Federalists brought out another copy of it and nailed it to the top of a pole, which they planted defiantly amid the ashes of the fire their opponents had made. Out of the proceeding there grew a riot, in which knives were drawn, stones were thrown, and blood was shed."—Fiske, *The Atlantic*, November, 1887.

**The First Election under the Constitution.**—As soon as a sufficient number of States had given their assent to the Constitution, the necessary elections were held. Senators and representatives were elected, and Washington was unanimously chosen to be the first President of the United States of America. When, on his inauguration, he took the oath of office to "preserve, protect, and defend the Constitution of the United States," and the vast company of people heartily shouted, "Long live George Washington, President of the United States!" there was a feeling of general confidence and security, and a firm belief that the permanency of the Republic was secured.

**The National Authority.**—From the foregoing chapters it will be seen that the common or national authority has been,

1. The government of Great Britain;
2. The Revolutionary Congress;
3. The Congress of the Confederation;
4. The government under the Constitution.

At first there was no political union between the colonies, but they were independent of each other. As British subjects, the colonists acknowledged the

authority of the government of Great Britain, and conceded the right of Parliament to legislate with reference to their foreign affairs; but at the same time they claimed the right to manage their local affairs, and to legislate with reference to their local interests. The unjust demands of the English government forced them to unite for common defence. Accordingly the Revolutionary Congress, composed of delegates from the several colonies, became to all intents and purposes the national government. It entered upon the exercise of comprehensive authority, and assumed the direction of the War of Independence. Whatever was done, received the support of the several colonies, although it had no legal or binding force. As the powers tacitly conferred upon the Revolutionary Congress would naturally cease at the close of the war, and the colonies be separated into independent States, Articles of Confederation, prepared by Congress, were adopted by the States. It was, however, soon found that the Articles were inadequate for the purposes of government. The Congress of the Confederation was powerless to make its authority either feared at home or respected abroad. Its greatest weakness was the lack of all coercive power. Finding that the Union could not long exist unless a stronger form of government was established, the States, after much discussion and mutual concessions, adopted the present form of government under the Constitution.

# THE GOVERNMENT UNDER THE CONSTITUTION

## CHAPTER VI.

### THE CONSTITUTION.

**A Constitution Defined.**—In every state there are some leading principles in accordance with which the powers of government are exercised, and the essential rights of the people protected. The principles collectively form what is called the constitution of a state.

**Constitutions, Written or Unwritten.**—Constitutions are either written or unwritten. A written constitution is a body of laws, contained in a written document, under which the government is conducted. The Constitution of the United States is an example. It has a definite form, is an orderly arrangement of principles in articles and sections, and is easily accessible. With the exception of a few amendments, which have since been added, it was framed and adopted at one time. An unwritten constitution is one having no definite form. The English constitution is an example. It does not consist of an orderly arrangement of articles and sections in a written document, but it is a body of principles scattered over a long period of time, and contained in acts of Parliament, concessions made by the kings, rules developed by the courts of law, and in established customs. Its growth has been gradual, its development can be traced

back many centuries, and it is in process of constant change. Written constitutions are of modern origin and are difficult of change; unwritten constitutions are of remote origin and subject to perpetual change. In the United States, a written constitution was a necessity.

**The Federal Constitution Supreme.**—The Constitution of the United States, as a body of principles, was first framed by delegates from the several States, and then submitted to the people of the States for their approval. After its adoption, it became the fundamental law of the land. All laws made in pursuance of its provisions, and all treaties made under its authority, are supreme, and the judges in every State are bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.[1] Any enactments of Congress or of the legislatures of the States which conflict with any of its provisions are void. The Constitution states the object of the people in establishing it, distributes the powers of government into departments and defines the powers of each, fixes the term of office of the members of the government and provides a method of calling them to account, forbids the exercise of certain powers, and makes provision for amendments.

"The American Constitution of 1789 was a faithful copy, so far as it was possible to make one out of the materials in hand, of the contemporary constitution of England."—"Encyclopaedia Britannica," vol. vi. p. 310.

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[1] The Constitution, Article vi. cl. 2.

**Officers Bound by Oath to Support the Constitution.**—Senators and representatives and all executive and judicial officers of the United States are required to solemnly swear, or make affirmation, that they will support the Constitution. It is very proper that those who are intrusted with the responsibility of executing the powers of the national government should place themselves under a solemn obligation to execute their trusts according to the will of the people as expressed in the fundamental law of the land. The members of the State legislatures, and all executive and judicial officers of the several States, are also required to take a like oath or affirmation. This is to secure the supremacy of the national government, whenever, in giving effect to the federal Constitution, the government of the United States and the State governments come in collision. In order not to exclude from office persons who have conscientious scruples against taking an oath, as, for example, the Quakers, an affirmation may be made instead of an oath.

**Constitutions Changeable.**—Changes of more or less importance must necessarily occur from time to time in the constitution of a state. The changing circumstances and needs of a people demand corresponding changes in the fundamental law. Every state must therefore have the power to change any of its laws. In Great Britain, Parliament is sovereign, and hence no law enacted by it can be questioned on the ground of unconstitutionality. If it is contrary to the principles embraced in the fundamental law, it acts as a modification of them.

In America, sovereignty resides with the people, and hence amendments to State constitutions are submitted to the people for approval. The Constitution of the United States also provides methods by which it may be amended.

**Amendments to the Constitution.**—Amendments to the federal Constitution may be proposed in two ways:

1. By Congress, whenever two thirds of both Houses deem it necessary;
2. By a convention called for this purpose by Congress, on the application of the legislatures of two thirds of the several States. This method has never yet been made use of.

Amendments, whether proposed by Congress or by a convention called for that purpose, before they can become a part of the Constitution, must be ratified by the legislatures of three fourths of the several States, or by conventions in three fourths, as the one or the other mode of ratification may be proposed by Congress.[1] To require the consent of all the States to an amendment, as under the Confederation, would practically make it impossible to alter the Constitution. On the other hand, the unrestricted control of a mere majority of States over the fundamental law might give rise to serious evils. Although every government must be able to adapt itself to the changing necessities and interests of the people, frequent and too easy

[1] The Constitution, Article V.

changes are to be guarded against. The present method has thus far proved satisfactory. After an amendment has been adopted, its effect is to nullify all provisions of State constitutions or State laws which conflict with it. One restriction is imposed on the power to amend. It is that no State, without its consent, shall be deprived of its equal suffrage in the Senate.[1] This was inserted to satisfy the small States.

"Experience has shown that the provisions of the Constitution about amendments are sufficient on the one hand to meet the demands of development, and on the other to put so strong a curb upon a restless search after novelty that the democratic republic has been more conservative in its fundamental law than any state whatever of the European continent."—Von Holst, "Constitutional Law of the United States," p. 32.

**Unconstitutional Law.**—An unconstitutional law is one that is opposed to the principles or rules of the constitution of the state.[2] In the United States, if the law is resisted, it goes before the courts, and a decision is reached by comparing the law in question with the fundamental law, the Constitution. When an enactment is found to be inconsistent with the provisions of the Constitution, it is declared void. But in England no law passed by Parliament is unconstitutional or void, and the courts cannot declare it so. Even if Parliament passes a law which is absurd, the courts may interpret it according to their judgment, but can pronounce no further upon it.

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[1] The Constitution, Article V.

[2] Cooley, "Principles of Constitutional Law," p. 24.

As the Constitution of the United States is based on English laws, and the government was suggested by that of Great Britain, it is interesting to note the resemblance and the difference between the two governments.

**Congress and Parliament.**—It will be seen that there is a marked difference between the powers of Congress and the authority of Parliament. Congress is limited in the exercise of power. All laws passed by it must be in conformity with the superior law, the Constitution. If an enactment of Congress conflicts with any provision of the Constitution, it may be declared void by the courts of justice. On the other hand, Parliament is politically omnipotent. Its enactments are of supreme authority. It is always within its power to change or alter the constitution of the realm. In reality every statute passed by Parliament becomes a part of the English constitution, and no court can declare any of its acts unconstitutional. Its power is absolute and without control.

1. "The power and jurisdiction of Parliament," says Sir Edward Coke, "is so transcendent and absolute that it cannot be confined either for causes or persons within any bounds."

2. "It is a fundamental principle with the English lawyers, that Parliament can do everything, except making a woman a man, or a man a woman."—De Lolme, "Constitution of England," p. 102.

**The Preamble of the Constitution.**—The preamble of the Constitution states the purpose for which the Constitution was framed, and affords a key to a proper interpretation of the provisions of the instrument itself. It reads as follows: "We, the people of the United States, in order to form a more

perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." For these high purposes was the Constitution ordained and the government established.[1]

**Departments of Government.**—The national government is vested by the Constitution in three departments, the legislative, the executive, and the judicial. The legislative department makes the laws, the judicial interprets them, and the executive carries them into effect. No officer belonging to one department can exercise the powers properly belonging to any other. The officer whose duty it is to execute the laws cannot decide the guilt or innocence of those accused of breaking the laws, and those who make the laws are not allowed to apply or carry them into execution. The great safeguard of all free governments is to keep these three departments as distinct and separate as possible. Wherever this division of power has existed, there has been the greatest amount of individual and political liberty. When the legislative, executive, and judicial functions are exercised by one person, the government becomes a despotism, and there can be no public liberty.

1. "The exercise of power, whether by an individual or a nation, is naturally divided into thinking, judging, and doing. Action implies all these: thought to originate, will and force

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[1] Pomeroy, "Constitutional Law," p. 109.

to execute a conceived purpose, judgment to compare it with rules of conduct."—Fisher, "Trial of the Constitution," p. 41.

2. "The accumulation of all powers, legislative, executive, and judicial, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."—Madison, "The Federalist," p. 374.

**Relation of these Departments to One Another.**—Although these three departments are in a certain sense distinct, and the functions of each are essentially different, yet they are so related to each other, and dependent upon one another, that each would practically be powerless without the aid of the other two. For example, after the legislative department has made laws, these laws would be of little avail unless carried into effect by the executive department. Of what use would it be for the judicial department to expound the laws and apply them to individual cases, unless its decisions were carried into effect? Congress may pass laws, but it cannot execute them. The judiciary may expound the laws, but it cannot make or execute them. The President can execute the laws, but he can neither make nor expound them. Thus each department is dependent on the other two, and can do but little without their aid.

1. "The maxim which lies at the foundation of our government is that all political power originates with the people. But since the organization of government it cannot be claimed that either the legislative, executive, or judicial powers, either wholly or in part, can be exercised by them. By the institution of government the people surrender the exercise of all these sovereign functions of government to agents chosen by themselves, who at least theoretically represent the supreme will of their constituents. Thus all power possessed by the

people themselves is given and centred in their chosen representatives."—Davis, "Gibson *v.* Mason," 5 Nevada, p. 291.

2. "The first maxim of a free state is that the laws be made by one set of men and administered by another; in other words, that the legislative and judicial characters be kept separate. When these officers are united in the same person or assembly, particular laws are made for particular cases, springing oftentimes from partial motives and directed to private ends. Whilst they are kept separate, general laws are made by one body of men, without foreseeing whom they may affect; and when made, they must be applied by the other, let them affect whom they will."—Paley.

## CHAPTER VII.

### THE LEGISLATIVE DEPARTMENT.

**Legislative Power.**—Although each department of the national government is in a certain sense independent of the other two, and each in its own sphere is supreme, the legislative or law-making department is the repository of most power.[1] It lays down general rules which are binding on the other departments. Its enactments are enforced by the executive department and interpreted by the judicial. At the commencement in a new state, neither executive nor court can do the work for which it was intended without some preparatory legislation.[2]

**Functions of the Law-Making Department.** — The principal function of the law-making department is to enact new laws, amend those which are inadequate, and abolish those which are bad. Laws which at one time meet the wants of the day, at another are inadequate. Customs and conditions are constantly changing, and legislation is needed to meet these changing conditions. It is also the proper office of a legislative assembly to watch and criticise the members of the government, hold public officers responsible for the proper performance

[1] Cooley, "Principles of Constitutional Law," p. 54.

[2] Woolsey, "Political Science," vol. ii. p. 261.

of their duties, censure them if found remiss, and expel them from office if they abuse their trusts.

**Legislation and the General Welfare.**—The effect of good or bad legislation upon the general welfare is so great that common prudence would naturally suggest that wise and able men should be chosen to discuss and decide questions affecting the happiness and prosperity of the general body of citizens. It, however, too frequently happens that persons without a sufficient amount of intelligence or knowledge are chosen as legislators, and that the law-making power is under the control of interests not identical with the general welfare of the people at large.

"Men are generally more honest in their private than in their public capacity; and will go greater lengths to serve a party than when their own private interest is alone concerned. Honor is a great check upon mankind. But where a considerable body of men act together, this check is in a great measure removed."—Hume.

**Division of the Subject.**—For the sake of convenience, the facts relating to the legislative department will be grouped under the following heads:

1. The two Houses of Congress;
2. The organization of Congress and the privileges of members;
3. Congress at work;
4. The powers of Congress;
5. Restrictions upon the powers of Congress.

**Legislative Powers, where Vested.**—All the legislative powers granted by the Constitution are vested in a Congress of the United States consisting of two Houses, a Senate and a House of Representa-

tives. The Congress of the Confederation consisted of but one House. The plan of two Houses was adopted by the Constitutional Convention, partly because it was the general conviction that if the national legislature should be composed of two branches, one branch would act as a check upon the other, and thus prevent hasty and oppressive legislation; and partly to prevent the fatal conflict which might one day take place between a single legislative body and a single executive.[1] As each House differs in organization, term of office, mode of choice, and qualifications of membership, it is apparent that this division of power is a wise one.

The division of the national legislature into two branches is a copy of the English Parliament. This is composed of the House of Commons and the House of Lords.

### THE HOUSE OF REPRESENTATIVES.

**The Popular Branch.**—This branch of the national legislature is composed of members elected every second year by the people of the several States. It is a more numerous body than the Senate. As the members are chosen directly by the people themselves for a short term of two years, they are more likely to represent the prevailing opinions of the time on public questions. It is reasonable to suppose that they will guard with especial care the interests of the people, resist all encroachments on their rights, seek to redress grievances, and assert the supremacy of the people in national

[1] Bancroft, "History of the Constitution," vol. ii. p. 16.

affairs. The House of Representatives is very properly called the popular branch of the legislature.

Under the Confederation, members of Congress were elected by the State legislatures, in all the States except two.

**Qualifications of Electors for Members of the House of Representatives.**—An elector is one who has the right to vote. At the time when the Constitution was adopted, the qualifications of electors varied in different States. Some States required that every person desiring to vote should own property, in other States only those were entitled to vote who paid taxes, while in others the right of suffrage was nearly universal. The Constitutional Convention decided, after much discussion, owing to the difficulty of agreeing upon any uniform rule of voting, that the same qualifications should be required as the constitution of each State required for electors of the most numerous branch of the State legislature. The Constitution does not, therefore, confer the right to vote on any one. This right is defined by, and is under the control of, the States themselves. They each declare who of their inhabitants shall vote for members of the popular branch of the State legislature, and such persons are entitled to vote for members of the popular branch of Congress. One limitation is placed, however, on the action of the States, by the fifteenth amendment, which forbids the denying to citizens of the United States the right to vote on account of race, color, or previous condition of servitude. This was designed to prevent discriminations against persons of African descent. Apart from this one limita-

tion, the right of the States to regulate the franchise, according to their own circumstances and interests, is not in the least abridged.

**Some Qualifications Required by the States.**—Formerly the greatest diversity existed regarding the qualifications of electors, owing to the different circumstances and temper of the people in the different States. Even now there is no complete uniformity. All States, however, require,

1. That electors shall be male citizens, though in some States a declaration of intention to become a citizen is sufficient.
2. That they shall be residents, for a specified time, of the State and the district where they vote. The time varies in different States.
3. That they shall be twenty-one years of age.

Other qualifications are required in some States, as, for example, in Massachusetts the ability to read and write, and in Pennsylvania the payment of taxes; but the tendency of late has been to require as few qualifications as will be consistent with the public safety. A residence for a certain time in an election district is required in order to prevent illegal voting. The purity of elections is the better preserved by obliging electors to vote where they live and are known. A check is thus placed on the importation of voters into doubtful districts, in order to secure the election of unprincipled candidates.

**Qualifications of Representatives.**—Three qualifications are required by the Constitution:

1. Each representative must have attained the age of twenty-five years.
2. He must have been seven years a citizen of the United States.
3. When elected, he must be an inhabitant of the State in which he is chosen.

The first qualification is necessary in order to secure that wisdom and experience which is indispensable in the management of public affairs. The second excludes from the House of Representatives those who have not lived long enough in the United States to become familiar with its institutions, and with the interests and needs of the country. The third secures to each State representatives who by actual residence have obtained an intelligent knowledge of the interests of the sections in which they reside. It has been the almost universal custom of free states to exclude foreigners from holding any office, through fear of foreign influence. In England an alien, even though naturalized, cannot be a member of either House of Parliament. A different policy has prevailed in this country.

**Apportionment of Representatives.**—Representatives are apportioned among the several States according to the population of each. Every ten years, commencing with the year 1790, Congress is required to make provision for an enumeration of the people of the United States. This enumeration does not include Indians, unless they are taxed. After the census is taken, and Congress has decided how many members shall compose the popular branch, the next step is to apportion these among the sev-

eral States. This is done by dividing the whole number of people in the States by the number of representatives to be chosen, no regard being paid to the population of the territories. The result obtained is what is called the ratio of representation, or the number of inhabitants entitled to one representative. Dividing the population of each State by the ratio of representation, will give the number of representatives to which each State is entitled. In making this last division, it will be found that there will be a remainder, sometimes small and at other times large. Each State will consequently have a number of persons unrepresented, and owing to these remainders the number of representatives will be less than the number fixed by Congress. This defect is partially remedied by assigning to the States having the largest remainders the remaining representatives.

1. As the census is taken every ten years commencing with 1790, it will be easily remembered that whenever the number of the year ends in a cipher, the census is taken.

2. The following may illustrate more clearly the method of apportionment. The population of the United States, not including that of the territories, is 49,371,340, according to the census of 1880. At present the number of representatives, as fixed by Congress, is 325. Dividing 49,371,340 by 325, we have 151,912, the ratio of representation. The population of the State of New York is 5,082,871. Dividing 5,082,871 by 151,912, the quotient is 33, and the remainder 69,775. For this remainder the State is given an additional representative. New York has, therefore, thirty-four representatives.

**Congressional Districts.**—After representatives have been apportioned among the several States, each State is divided by the State legislature into as many

districts as it has representatives. These districts are called congressional districts, and are numbered; as, first congressional district, second congressional district, etc. Each congressional district contains the prescribed number of inhabitants entitled to representation, and elects its own representative. When a State is assigned an additional representative, and the legislature fails to redistrict the State so as to form an additional congressional district, the representative is voted for on a general ticket; that is, by the State at large, and is known as congressman at large.

**Two Limitations.**—Two limitations are imposed by the Constitution on the action of Congress in apportioning representatives:

1. Every State must have at least one representative.
2. The number of representatives must not exceed one for every thirty thousand persons.

If Congress were allowed to fix the ratio of representation without any restriction whatever, it might make it so large that small States would be deprived of all representation in the popular branch of the legislature. On the other hand, if the ratio should be less than thirty thousand, the House would become so unwieldy, by reason of its number, that the transaction of business would be greatly impeded.

**Difficulty in Adjusting the Basis of Representation.**—One of the most difficult matters to adjust satisfactorily in the Constitutional Convention was the ba-

sis of representation. The small States desired equal representation with the large; the Southern States demanded that the slaves should be counted as a part of their population in apportioning representatives, and the Northern States contended for a representation of free persons only. If the same representation was given to the small States as to the large, it was claimed that the large States would not have that influence in legislation which their interests warranted. To count the slaves would give great political influence in legislation to the Southern States. If, for example, a State having as many slaves as free persons were allowed to count the slaves as part of its population in the apportionment of representatives, as slaves were not allowed to vote, the white voters in the South would have twice the number of representatives that they would be entitled to if they did not own property in slaves. In other words, a white man in the South would really count for more than an elector in the North. The discussion became at times so animated that it seemed as though the convention would break up in disorder, and the delegates return to their States without accomplishing the object for which they had assembled. Finally, by making mutual concessions, it was agreed that representatives and direct taxes should be apportioned among the several States according to the free population and three fifths of the slaves. In other words, to satisfy the slaveholding States, five slaves were to be counted as three freemen; and to reconcile the non-slaveholding States to this agreement, direct taxes

were to be apportioned in the same manner as representatives. With the abolition of slavery the plan of apportionment was changed by a constitutional amendment. Representatives are now apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.[1]

### THE SENATE.

**The Upper House.**—The Senate is composed of two senators from each State, chosen by the State legislature for a term of six years. It is sometimes called the Upper House, to distinguish it from the House of Representatives, which is called the Lower House. The Senate is composed of men of greater experience in public affairs than the members of the House of Representatives. It is a less numerous body, less subject to change, more conservative and stable, and less liable to be influenced by popular excitement. To represent one's State in this honorable body is the ambition of able men, and no greater political honor than this can be conferred by a State upon any of its citizens. Members of the Lower House naturally covet a seat in the Senate as a reward for long and faithful services. In consideration of the fact that the smaller States consented to the apportionment of representatives according to population, the larger States consented that every State, without any regard to its population, should have equal representation in the Senate. In the Con-

[1] "Amendments," Article XIV. sec. 2.

gress of the Confederation each State had an equal vote with every other. Under the Constitution, each senator as well as each representative has one vote. Two senators are designated so that in case one is absent, either on account of sickness or for any other cause, the State will not be wholly unrepresented.

**Changes in the Senate Gradual.**—In order to avoid frequent and radical changes in the complexion of the Senate, and to secure all the advantages which experience and long training can alone bring, not only was the term of office of senators fixed at six years, but it was also provided by the Constitution that the term of office of only one third of the members should expire at one time. At the expiration of every second year the seats of one third of the senators are vacated. If new members are elected, there will still be one third of the remaining members who have had at least an experience of two years, and the other third will have served not less than four years. Thus changes in the Senate are gradual, and unaccompanied by the radical and unexpected movements which frequently characterize the House of Representatives.

**Senators, How Classified.**—When the senators first convened after the adoption of the Constitution, they were divided as nearly as possible into three equal classes, and in such a manner that the senators from the same State should not be in the same class. It was then determined by lot which class should vacate their seats at the expiration of the second year, which at the expiration of the fourth

year, and which at the expiration of the sixth year. The classes were numbered first, second, and third. By this arrangement the term of office of senators of the first class would expire in 1791, 1797, 1803, etc.; of the second, in 1793, 1799, 1805, etc.; of the third, in 1795, 1801, 1807, etc. On the admission of a new State to the Union, the two senators are placed in different classes, so that their term of office will not expire at one time, and the classes may be kept as nearly equal in number as possible.

**Qualifications of Senators.**—As certain requirements were deemed requisite for admission as members of the House of Representatives, how much greater reason was there for requiring such qualifications of senators as the greater dignity of the Senate and the interests of the States demanded. Accordingly the following qualifications are required by the Constitution:

1. Every senator must have attained the age of thirty years.
2. He must have been nine years a citizen of the United States.
3. When elected, he must be an inhabitant of the State for which he is chosen.

### RELATING TO BOTH HOUSES.

**Election of Senators and Representatives.**—The Constitution provides that the times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the State legislature; but, in order to secure to the national

government a superintending control over these elections, and to guard against the danger of any State legislature neglecting to make suitable provision for holding them, it is further provided that Congress may, at any time, make or alter such regulations, except as to the places of choosing senators.[1] Inasmuch as senators are elected by State legislatures, it would manifestly be improper for Congress to prescribe the places where the legislatures should hold their meetings.

**The Time and Mode of Election.** — By act of Congress it is provided that the election of representatives shall be on the Tuesday next after the first Monday in November, in the year 1876, and every two years thereafter, in fixed geographical districts. This time does not, however, apply to any State whose constitution has fixed some other day. The election, therefore, occurs in November of every even year, and on the same day in nearly all the States. All votes for representatives must be on either written or printed ballots. The time designated by Congress for the election of senators is the second Tuesday after the meeting and organization of the legislature. In each house each member names, by a *viva voce* vote, some one for senator. At twelve o'clock on the following day the two houses convene in joint assembly, and if the same person has received a majority of votes of each house he is declared elected. If this is not the case, the joint assembly proceed to choose some one by

[1] The Constitution, Article I., sec. 4, cl. i.

a *viva voce* vote, and the person who receives a majority of all the votes of the joint assembly, a majority of the members of both houses being present, is declared duly elected. If no one receives such a majority on the first day, the joint assembly is required to meet at noon of each succeeding day during the session of the legislature, and take at least one vote, until a senator is elected. If any vacancy occurs during the session, the legislature proceed to elect a senator on the second Tuesday after notice has been received of the vacancy.

**Vacancies.**—If a vacancy occurs in the Senate by resignation or otherwise when the State legislature is not in session, the governor may make a temporary appointment, the person thus appointed holding the office till the next meeting of the legislature. To summon the legislature for the special purpose of filling a vacancy would occasion great inconvenience. In the House, when vacancies happen in the representation from any State, the governor of the State is required to order a new election in the congressional districts in which such vacancies occur. The representatives thus elected hold office only for the unexpired terms of their predecessors.

**A Comparison.**—The following comparison may be of service in remembering facts already given:

1. Representatives must have attained the age of twenty-five; senators, thirty years.
2. Representatives must have been seven years citizens of the United States; senators, nine years.

A foreigner must reside in this country five years before he can become a citizen, consequently he must have had a residence of twelve years before he can be chosen as a representative in Congress. To be qualified for a seat in the Senate, a residence of fourteen years is necessary.

3. When elected, both representatives and senators must be inhabitants of the State in or for which they are chosen.
4. The House of Representatives is called the Lower House; the Senate, the Upper House.
5. Representatives are elected by congressional districts; senators, by State legislatures.
6. Vacancies in the House are filled by a new election; in the Senate, by the governor, if the State legislature is not in session.
7. The term of office of representatives is two years; of senators, six years.
8. Representatives are apportioned among the States according to their population; two senators are chosen by each State without reference to its population.
9. The House of Representatives is called the popular branch of the legislature, its members being elected directly by the people; it is a more numerous body than the Senate, and represents more nearly the prevailing opinions of the day; senators represent States, are less influenced by popular excitement, and are more conservative in action.

10. The Senate is considered an abler body than the House of Representatives, members of the Lower House, of long experience and great ability, being frequently promoted to the Upper House.

## CHAPTER VIII.

### THE ORGANIZATION OF CONGRESS AND THE PRIVILEGES OF MEMBERS.

**Certain Powers.**—There are certain powers which naturally belong to every legislative body, and without which there would be wanting that independence and efficiency which are indispensable to the proper performance of legislative functions. These are the right,

1. To be the judge of the elections of its own members;
2. To determine the rules of its proceedings;
3. To punish its members for disorderly conduct;
4. To expel a member for just cause;
5. To compel the attendance of absent members;
6. To punish persons not members for contempt of its authority.

**The Elections, Returns, and Qualifications of Members.**—Contests frequently arise between rival candidates as to the legality of an election, each claiming that he is entitled to a seat in Congress. Likewise the qualifications of persons claiming seats in either House may be called in question. It is therefore evident that there must be lodged somewhere a power to examine into disputed cases, and to de-

cide who are legally qualified and elected. Returns are certificates of election issued by the proper officers, which are received as the evidence of a legal election. When the validity of an election is tested by an opposing candidate, either House may go behind the certificate of election, examine witnesses, and decide who has received a majority of legal votes. Until the matter is decided, the person holding the certificate of election is a member of Congress, just as if there were no question about his election. If the power of determining who were legitimately chosen members were lodged in any other than the legislative body itself, it could not maintain its own independence.

**Rules of Procedure.**—It is of vital importance to the general welfare that the business of the nation should be properly transacted, and that order and regularity should be preserved. Unless there should be some uniformity of proceeding in the transaction of business, irregularities and abuses would naturally follow. Forms and rules of procedure operate as a check on the actions of a majority, and they are frequently a protection to a minority against the abuse of power which successful majorities are apt to make use of. It is the custom of each newly elected House of Representatives, at the beginning of its first session, to adopt the rules and regulations of the preceding House.

**Disorderly Behavior of Members.**—Merely to make rules for the government of a legislative body would be of little avail, unless there was associated with this the power to punish members for disregarding

these rules and for unbecoming conduct. Legislation cannot be properly carried on, unless order is maintained and violence checked. When members in time of excitement give way to outbursts of anger and to unparliamentary conduct, a call to order or a reprimand by the presiding officer is usually sufficient. But disorderly members are not only liable to censure, but to such punishment as the House to which they belong may deem proper.

**The Expulsion of Members.**—In a case of aggravated misconduct, either House may expel a member. Neither House could properly perform its high functions, and preserve its dignity and reputation before the people, without this power. In order, however, to guard against the danger of a member being expelled, for the purpose of furthering the interests of a political party or of carrying through some corrupt measure, the Constitution requires the concurrence of two thirds of the members to justify expulsion.

**Power to Compel the Attendance of Members.**—Unless provision were made to compel the attendance of absent members whenever a quorum was not present, the wheels of legislation might at any time be blocked by the preconcerted absence of a number of members. By the rules of each House, every member is required to be present during its sittings, unless excused or necessarily prevented. In the absence of a quorum, the members present are authorized by the Constitution to compel the attendance of the members who are absent. This is done in

such manner and under such penalties as each House may provide.

**Power to Punish for Contempt.**—Although the power to punish offences committed against either House by persons not members is not specifically conferred by the Constitution, still the power exists by implication, and may be exercised by each House. Congress could not exercise the powers of legislation and deliberation without the authority to enforce silence and good order among strangers, to expel intruders, to protect its members, and to inflict punishment for contempt of its authority. If persons whose testimony was regarded as important should refuse to appear when summoned by either House, Congress would be unable to exercise some of its constitutional functions unless it had the power to compel the attendance of such persons. Refusal on the part of any one to comply with the commands of Congress is regarded as contempt, and exposes the offender to arrest and imprisonment. Imprisonment cannot extend beyond the adjournment of Congress.

**Other Provisions.**—The Constitution furthermore provides,

1. That Congress shall assemble at least once each year;
2. That a majority of each House shall constitute a quorum to do business;
3. That neither House shall adjourn for more than three days, without the consent of the other;
4. That each House shall keep a journal of its

proceedings, and that the yeas and nays shall be entered on the journal, at the desire of one fifth of the members present.

**Meetings of Congress.**—Congress is required to assemble at least once in every year, on the first Monday in December, unless they shall by law appoint some other day. Annual sessions are therefore obligatory, and the meetings of Congress are neither dependent on the will of the chief executive nor the caprice of members or factions. The business of the nation will thus be less likely to be neglected, and the liberties of the people will be more carefully guarded. On extraordinary occasions, as, for example, unexpected calamities, financial distress, insurrections, foreign complications, and other important exigencies, the President may convene both Houses or either of them.

**A Quorum.**—A majority of each House constitutes a quorum to do business. If less than a majority were allowed to transact business, laws might be passed to promote local or special interests, at the expense of the general welfare. When a quorum is not present, a smaller number may adjourn from day to day, in order to prevent a legal dissolution of the body, and may compel the attendance of absent members.

**Adjournments.**—Neither House, during the session of Congress, can, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses are sitting.[1] As every bill, to become law, must receive

[1] The Constitution, Article I. sec. 5, cl. 4.

the approval of both Houses, if either body could adjourn at its pleasure, legislation would be suspended. To allow either House, through any disagreement, to sit in separate localities, would cripple the operations of the government, and endanger the peace of the Union. In case of a disagreement between the two Houses with respect to the time of adjournment, the President may adjourn both Houses to such time as he may think proper. This power no President has seen fit to exercise.

As the Confederation was without a seat of government, Congress was compelled to assemble at some one of the principal cities of the Union. The fear was expressed in the Constitutional Convention that a difference of interests between the branches of the proposed Congress might lead to a disagreement as to the place of their future sessions.

**The Journal.**—In order to give publicity to the proceedings of Congress, and to furnish the public with reliable information as to what is being done, each House is required to keep a journal of its proceedings, and from time to time publish the same, except such parts as in their judgment require secrecy.[1] It is also provided that the yeas and nays of the members of either House may be called on any question and entered on the journal, at the desire of one fifth of those present. Members can thus be held responsible, by those whose interests they represent, for their votes on important questions, and be called to account at any time by their constituents. As the calling of the roll consumes con-

[1] The Constitution, Article I. sec. 5, cl. 3.

siderable time, and might be resorted to by one or two members in order unnecessarily to delay action, the yeas and nays can only be called at the desire of one fifth of the members present. Sometimes a minority, bitterly opposed to a measure, will delay action, and even defeat an obnoxious bill, by repeatedly insisting on the calling of the roll. This is termed "filibustering," and at times is kept up all night, and for several days in succession.

It is a common custom for Congress to grant leave to its members to insert speeches in the official record of its proceedings which it has never heard. These appear in the daily newspaper printed by Congress, called the *Congressional Record*, and are sent by members, in pamphlet form, to their constituents. This practice arose from the want of time for speech-making in so large a body as the House of Representatives, and from a desire to appear on the record in public discussions. It is said that at one time a speech was inserted in the form of a poem. A government printing-office is maintained by Congress to publish its proceedings and all public documents.

**Privileges of Members.**—The privileges of members are,

1. Freedom from arrest, except for treason, felony, and breach of the peace;
2. Freedom of speech and debate.

Treason, felony, and breach of the peace include all criminal offences, and consequently freedom from arrest extends only to civil actions.

**Freedom from Arrest.**—Senators and representatives are in all cases, except for criminal offences, privileged from arrest while going to or returning from any session of Congress, and during the continuance of the session. If members of Congress

could at any time be arrested, advantage might be taken of this by political enemies to detain, on any pretence, active and able members, when their presence was most needed, and to intimidate others in the performance of their duties. Freedom from arrest is not, however, designed simply to protect the personal independence of members, but to secure for each State and congressional district the votes and present services of its senators and representatives in the national legislature. On the other hand, members ought not to be exempt from arrest for crimes of violence and breaches of the peace.

**Freedom of Speech and Debate.**—In the exercise of the powers of legislation, the interests of the State require that members of Congress should be protected in the full and free expression of their opinions regarding either measures or persons. Without this privilege, independence in judgment and action would not be possible. If members were liable to prosecution for anything said in the exercise of their official duties, freedom of speech would be checked by the fear of prosecution, and the dread of offending wealthy men or powerful corporations, and there would be wanting that fearlessness and independence in debate which the importance of public interests demand. Freedom of speech is limited to what is said in Congress, and does not cover what may be said elsewhere.

**Compensation of Members.**—There was considerable diversity of opinion in the Constitutional Convention as to whether members of Congress should receive

any compensation for their services. It was maintained by some that if compensation were allowed, a seat in Congress would be sought with a view to the compensation alone. On the other hand, it was maintained that unless some compensation was given, able men of limited means would be unable to accept of a seat in the national legislature, and thus the country would be deprived of their services. There was also difference of opinion as to the way in which members should be paid, if paid at all. Some thought that they should be paid by their respective States; others favored the plan of paying senators and representatives out of the treasury of the United States. This last method was finally decided upon, in that it would avoid inequalities in allowances, secure promptness of payment, and not make members dependent on the mere whims of their constituents for support. The amount of compensation is wisely left to be determined from time to time by Congress. A compensation that might have been adequate at the time the Constitution was framed would be wholly inadequate at the present time. Frequent elections are an effective check against any extended abuse of this power. A few years ago (1873) the salary of congressmen was raised by act of Congress from five thousand dollars to seven thousand five hundred. So emphatically did the people condemn this law that it was subsequently repealed.

1. "To be ascertained by law" is another form of expression for "to be determined by law," that is, by act of Congress. See Article I. sec. 6, cl. 1.

2. Members of Parliament receive no compensation. At one time those from cities received two shillings a day. Some of the towns petitioned Parliament to be excused from sending members, as they were not able to bear the expense, on account of being engaged in making some public improvements.

**Disqualifications of Members.** — The Constitution provides,

1. That no senator or representative shall, during the time for which he is elected, be appointed to any civil office under the United States which shall have been created, or its emoluments increased, during such term;
2. That no person holding any office under the United States shall be a member of either House during his continuance in office.[1]

The first disqualification is to prevent the creation of new and lucrative offices for the personal advantage of members, and to remove as far as possible the temptation to increase the compensation of certain offices for a like purpose; the second is to prevent the general government from obtaining an undue influence in the national legislature.

The fourteenth amendment makes disloyalty a disqualification for holding office. Congress has, however, in most cases removed this disability. Congressmen also come within the provision of Article I. sec. 9, cl. 8, which forbids any federal officer to accept, without the consent of Congress, of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

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[1] The Constitution, Article I. sec. 6, cl. 2.

## CHAPTER IX.

### CONGRESS AT WORK.

**Necessity of Organization.**—Before any business can be transacted by any legislative body, composed as it usually is of many members, differing in views and representing various political and local interests, it becomes necessary to effect some kind of organization, and to adopt certain forms and modes of procedure. Without a presiding officer to give direction to the deliberations of an assembly, without proper officers to keep a record of the proceedings, and to perform duties that the needs of deliberative bodies naturally give rise to, and without committees to which bills can be referred for consideration so that they can be more readily acted upon by a large body, but little progress could be made in legislation.

**Presiding Officers of Each House.**—The presiding officer of the Senate is called the president; of the House of Representatives, the speaker. The Vice-President, by virtue of his office, is president of the Senate; the speaker is chosen from among the members of the House of Representatives. It is the duty of each to preserve order, and to see that business is transacted in the manner prescribed by the rules of each House.

**President of the Senate.**—The question may natu-

rally arise, Why should not the president of the Senate be selected from among the members of the Senate, as the speaker is selected, rather than the Vice-President be designated as its presiding officer? The Senate, it should be remembered, represents the idea of State sovereignty, each State, irrespective of its size and population, being entitled to two senators. Anything that might seem to give to one State more influence than to another in the Senate would be regarded with suspicion and jealousy, and it was feared that if one of the senators was chosen presiding officer, it might give to the State he represented an undue influence in shaping legislation. To remove all causes for jealousy, and to preserve, if possible, perfect State equality, it was deemed best to designate the Vice-President as president of the Senate. He is not allowed to vote unless the Senate is equally divided. In the absence of the Vice-President, or when he exercises the office of President of the United States, a president *pro tempore* is chosen by the Senate.

**The Speaker.**—The speaker is the presiding officer of the House of Representatives. He is chosen by the adherents of the political party having a majority in the House, and is, as a general rule, one of their accredited leaders. As he appoints the members of the various standing committees, by whom a great part of the business of the House is transacted, he necessarily exercises considerable influence in shaping legislation. These committees are naturally constituted in accordance with his own political views. Next to the election of the President,

that of speaker seems to excite throughout the country the keenest interest. The selection is regarded as an index of what the character of legislation is likely to be for the session.

It was formerly the custom of the presiding officer of the House of Commons to answer in behalf of the House all communications addressed to it by the King. This in part suggested the title of speaker. The speaker of the House of Commons receives twenty-five thousand dollars per annum, a palace to live in, and, on retiring from the office, a pension of twenty thousand dollars a year.

**Other Officers.**—The following officers, not members of Congress, are chosen by the House of Representatives: clerk, sergeant-at-arms, doorkeeper, postmaster, and chaplain. These officers, together with the speaker, are elected at the commencement of each Congress, and continue in office till their successors are chosen. Each is obliged to take an oath to support the Constitution of the United States, and to discharge faithfully the duties of his office. Stenographers, assistants, clerks, messengers, etc., are employed to aid the presiding and other officers in the discharge of their numerous duties.

**Duties of these Officers.**—The officer next in importance to the speaker is the clerk. His principal duties are to keep a record of each day's proceedings, certify to the passage of all bills, and cause to be printed and distributed such reports and documents as the rules of the House require. The sergeant-at-arms is a sort of police officer. It is his duty to maintain order under the direction of the presiding officer, compel the attendance of absent

members when so ordered, and execute all the commands of the House. The symbol of his office is a mace, which is borne by him while enforcing order on the floor. The doorkeeper sees that the rules relating to the admission of persons to the sittings of Congress are enforced, and he is held responsible for the furniture, books, and other public property in the rooms under his charge. The postmaster superintends the post-office kept in the Capitol for the convenience of members and officers, and is held responsible for the prompt and safe delivery of the mail. The chaplain opens each day's session with prayer. The corresponding officers of the Senate are, secretary, sergeant-at-arms, postmaster, and chaplain, and they perform somewhat similar duties. The doorkeepers are under the control of the sergeant-at-arms.

1. Sergeant-at-arms was originally an officer of police, appointed to attend the person of the king and other great dignitaries.

2. In the French Assembly, when the deputies become unmanageable, the president, by putting on his hat, may adjourn the sitting for one hour.

3. Sometimes when the House is in session all night, the sergeant-at-arms is ordered to bring in absent members, on account of a quorum not being present. Wherever members are found, in bed or elsewhere, they are hurriedly brought to their places, and required to give publicly to the House an excuse for their absence. Some of the excuses are exceedingly ludicrous.

**What is Meant by a Congress.**—The term of service of representatives commences on the fourth day of March of every odd year, as 1881, 1883, 1885, 1887, and continues for two years. Each representative

term, or period of two years, is designated as a Congress, and is numbered. For example, the Congress of 1883–1884 is known as the Forty-eighth Congress. Each Congress holds at least two sessions, one being designated as the short session, the other as the long session. The short session commences on the first Monday of December of every even year, and ends on the fourth of March following. The long session begins with a new Congress, that is in December of every odd year, and continues till the following midsummer. At the expiration of a Congress, the term of office of all the representatives and one third of the senators expires.

**Meeting of Congress.**—On the day fixed for the first meeting of a Congress, the newly elected representatives assemble in the hall of the House of Representatives in the Capitol at Washington, and at the hour of twelve o'clock are called to order by the clerk of the last House, who calls the roll of members, and acts as presiding officer until a speaker is chosen. In making out the roll, the clerk includes the names of all persons holding certificates of election from the proper officers. If there is any question about the right of any one to have a seat, this is decided afterwards by the House. After it is ascertained that a quorum is present, the House proceeds to the election of speaker. Upon his election, the oath of office is administered to him by one of the members, usually the one who has been longest a member of the House, called familiarly the "father of the House." The speaker then administers a similar oath to all the mem-

bers and delegates. The Senate convenes, at the same time as the House of Representatives, in what is known as the Senate chamber. The Vice-President, as president of the Senate, administers the oath of office to new members, and takes charge of the organization. Each new senator is escorted to the president's desk by his colleague from the same State. The regular hour for both Houses to meet is twelve o'clock. The usual time of adjournment is about six o'clock, although evening and all-night sessions are sometimes held.

**The Customary Notifications.**—It is customary for the House of Representatives, after the election of speaker and after the oath of office has been administered, to notify the Senate that a quorum is present, that a speaker has been chosen, and that the House is ready to proceed to business. Upon the Senate informing the House of Representatives of the presence of a quorum, a joint committee is appointed by both Houses to wait on the President of the United States, and inform him that a quorum of the two Houses has assembled, and that Congress is ready to receive any communication he may be pleased to make.

**The President's Message.**—It is the custom of the President, at the commencement of each session, to send an official communication to the two Houses of Congress, giving them information of the state of the Union, and recommending to their consideration such measures as he deems necessary and expedient. This is known as the President's Message. As chief executive he becomes familiar with the

practical workings of the laws, and from the nature of his duties he possesses extensive sources of information regarding foreign as well as domestic affairs. He cannot submit bills to Congress, but he can call the attention of the law-making power, and through them the whole people, to such matters as require the enactment of new laws or the improvement and alteration of existing laws, and make such recommendations as the state of the Union seems to suggest. Although Congress is not bound by his recommendations, his views, thus formally presented, have a certain controlling influence upon legislation. Accompanying the message are the voluminous reports of the secretaries relating to their several departments. Special messages are sent to Congress by the President on matters of special importance.

It was the practice of Washington and Adams when President to meet both Houses at the opening of each session, and present in person their views and recommendations. An answer in writing was afterwards returned by each House. Jefferson introduced the present plan of written messages. No answer is now returned by Congress.

**Organization Completed.**—When the clerical and other officers have been chosen, seats selected, and committees appointed, each House is fully organized, and ready for the work of legislation.

**Standing Committees.**—It would be impossible for either House of Congress to perform the vast amount of work required at each session, unless measures to be acted upon were first digested and put into proper form by committees especially ap-

pointed for that purpose. One committee considers all bills relating to the appropriation of public money, another has under its consideration all ways and means for obtaining a revenue for the support of the government, and there are as many other committees as there are appropriate subjects for legislation. A greater number of subjects can thus be considered at one time, and they can be presented to each House, for future action, in such a form as to be more readily acted upon. These committees, appointed as they are for a definite time, are called standing committees. In the House of Representatives they are selected by the speaker; in the Senate, by adherents of the political party having a majority in that body, a caucus committee being chosen by them to make up the committees. The committees meet in rooms specially prepared for their convenience in the Capitol, and carefully examine all measures referred to them. Each has its chairman, and a special clerk is provided to record its proceedings. When a committee reports in favor of or against a particular measure, the House to which it belongs usually acts according to its recommendations. The committees thus shape and give direction to all legislation. From time to time, as occasion requires, select committees are appointed for special and temporary purposes.

1. There are in the Senate about thirty standing committees: Privileges and Elections, Foreign Relations, Finance, Appropriations, Commerce, Manufactures, Agriculture, Military Affairs, Naval Affairs, Judiciary, Post-offices and Post-roads, Public Lands, Private Land Claims, Indian Affairs, Pensions, etc.

2. In the House of Representatives there are over forty standing committees: Elections, Ways and Means, Appropriations, Judiciary, Banking and Currency, Coinage, Weights and Measures, Commerce, Agriculture, Foreign Affairs, Military Affairs, Naval Affairs, Post-offices and Post-roads, Public Lands, Indian Affairs, etc. The person first named on each of the above standing committees is chairman.

**Mode of Passing Bills.**—Supposing that a bill, having for its object the promotion of the educational interests of the country, should be presented by a member to the House of Representatives. It is first referred without debate to the Committee on Education and Labor. If, after due consideration, the subject should be deemed of sufficient importance to be acted upon by the House, it is reported back to the House by the committee having the subject in charge. Before its passage it must receive three readings. It may be amended and passed, or defeated. If the bill passes the House, it is sent to the Senate, where it is referred to the appropriate committee, reported back, and discussed. It may be amended by the Senate, and, if so, it is returned to the House of Representatives. If passed without amendments, it is enrolled on parchment, and taken to the President of the United States for his approval. If the bill receives his signature, it becomes law. The parchment on which it is written is then deposited among the public archives of the Department of State, and the law is published, under the direction of the Secretary of State, as a statute of the United States. If the President does not approve of the measure, he returns it with his objections to

the House in which it originated, in this case the House of Representatives, and his objections are entered at large on their journal. The bill, after being vetoed by the President, may still become law if passed by a two thirds vote of each House. When this vote is taken it must be by roll-call, and the names of the members voting for or against must be entered on the journal of each House.[1] The reading of every bill three times, the concurrence of both Houses, the approval of the President, are all designed to compel a careful examination of proposed laws, and to prevent hasty and improper legislation.

When the two Houses are not able to agree in regard to the provisions of a bill, a committee of conference may be proposed by either House to adjust, if possible, these differences.

**Revenue Bills.**—Bills may originate in either House, with the exception of revenue bills, which must originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills.[2] The power to originate bills of this kind was delegated to the House of Representatives, on the principle that as the people paid the taxes, their more immediate representatives should alone originate all money bills. This is in imitation of the British House of Commons.

**How Bills may Become Laws.**—A bill may become a law,

1. By receiving a majority vote in each House, and the signature of the President;

[1] The Constitution, Article I. sec. 7, cl. 2.

[2] The Constitution, Article I. sec. 7, cl. 1.

2. By receiving a two thirds vote in each House, without the signature of the President;
3. By not being returned by the President to the House from which it originated, within ten days, Sundays excepted, after it has been presented to him.

After Congress has adjourned, no bill can become law unless signed by the President. Without this restriction, Congress might adjourn in order not to give the President an opportunity of returning a bill with his objections. On the other hand, unless the President was required to return a bill within a certain specified time, he might defeat legislation by retaining the bill in his own possession. All orders, resolutions, or votes to which the assent of the Senate and House of Representatives may be necessary, except on a question of adjournment, must be presented to the President, in the same manner that all bills are. This is to prevent Congress from adopting some other form than that of a bill in order to defeat the purpose of the President's veto.

When the President neglects to return a bill that has been sent to him for his signature within ten days of the close of a session, the bill is said to be "pocketed." This is a kind of silent veto.

**Relation of the President to Legislation.**—Since, as a rule, no bill becomes law without the signature of the President, he is sometimes spoken of as the third branch of the legislature. Although it is true that every bill to become law must, with the exceptions above referred to, receive his approval

as well as that of a majority of the members of each House, his relation to all legislation is entirely different from that of either House of Congress. All legislative powers granted by the Constitution are specifically vested by that instrument in Congress alone. The President can submit no bills nor can he originate any legislative measure. He may offer suggestions, but his suggestions may be utterly disregarded. Even when he refuses to sign a bill, a majority of two thirds can dispense with his approval. Also a bill may become law without any expression of opinion on his part, if not returned within ten days. The natural tendency of the legislative department is to encroach upon the authority of the other branches of the government, as well as upon the rights of the people at large, and the veto power was conferred upon the President as a means of defence against any encroachments of the law-making power. The relation, therefore, of the President to legislation is primarily that of control.

1. Even after a bill has passed both Houses of Congress and has been signed by the President, it becomes inoperative if the Supreme Court declares its provisions to be contrary to the Constitution.

2. The President represents the people at large — the nation; the senators, the people in separate commonwealths—the States; the representatives, the same people in small communities—congressional districts. Thus the people in their different relations and interests are represented in the making of the laws.

## CHAPTER X.

### THE POWERS OF CONGRESS.

**Powers of Legislation Vested in Congress.**—In Congress are vested the powers of legislation. These powers are enumerated in the Constitution. Hence the government of the United States is said to be a government of enumerated powers. It must not be forgotten that the formation of a national government was only rendered possible by the several States surrendering certain powers, and conferring them upon the general government. The Constitution is the instrument which specifies what these delegated powers are.

**General Powers of Congress.**—The following powers are conferred by the Constitution upon Congress:

1. To levy taxes and to borrow money;
2. To regulate interstate and foreign commerce, to coin money, to fix a standard of weights and measures, and to establish uniform laws on the subject of bankruptcy;
3. To establish a uniform rule of naturalization;
4. To establish post-offices and post-roads;
5. To grant patents and copyrights;
6. To punish piracies and certain other crimes and offences, to declare the punishment of

treason, and to constitute tribunals inferior to the Supreme Court;

7. To declare war, to maintain an army and navy, and to provide for the organization of the militia, and for calling them into the service of the United States;
8. To exercise exclusive legislation over all ceded districts;
9. To make all laws which shall be necessary and proper for carrying into execution the provisions of the Constitution.

### TAXES AND THE PUBLIC DEBT.

**One of the Principal Defects of the Confederation.**—One of the most serious defects of the Articles of Confederation was that the government could not impose taxes, but was compelled to appeal to the States for the money needed to carry on the government. It is impossible to maintain an independent government without there being some means at its disposal of meeting its legitimate expenses, and of providing for the common defence and general welfare. Congress has full power to levy and collect such taxes as are necessary to defray all national expenditures and to meet all obligations, and also to borrow money on the credit of the United States. It is one of the fundamental principles of a free government that taxes cannot be imposed except by the consent of the people or that of their representatives. The power of taxation is thus very properly vested in Congress.

**The Word Tax Defined.**—A tax is a levy upon per-

sons or property for the support of government. Any contribution imposed by a government upon individuals for the service of the state, is in a general sense a tax. Taxes are of two kinds, direct and indirect.

**Direct Taxes.**—Taxes which a person pays directly for real or personal property would usually be regarded as direct taxes. The United States courts have, however, decided that only capitation and land taxes come under the head of direct taxes. This is no doubt owing to the clause of the Constitution which requires that direct taxes shall be apportioned among the several States according to their respective numbers.[1] If a tax on incomes or carriages were regarded as a direct tax and apportioned among the States according to their representative population, glaring inequalities would follow.

1. Capitation (from the Latin word *caput*, a head) is a tax upon each head or person, a poll tax. It is levied on all persons alike, without reference to property, and is commonly called capitation-tax.

2. "If two States, equal in census, were each to pay eight thousand dollars by a tax on carriages, and in one State there were one hundred carriages and in another one thousand, the tax on each carriage would be ten times as much in one State as in the other. While A, in one State, would pay for his carriage eight dollars, B, in the other State, would pay for his carriage eighty dollars."—Kent, "Commentaries on American Law," vol. i. p. 255.

**Indirect Taxes.**—Taxes which the consumer pays as part of the price of the commodity are called

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[1] The Constitution, Article I. sec. 2, cl. 3.

indirect taxes. The main reliance of our government has been upon duties or imposts laid upon articles imported into the country. These duties, when collected upon goods imported by wholesale merchants, fall indirectly upon the consumer, and are paid by him as part of the price of the imported article. For example, the merchant importing tea pays a government tax, adds this to the price of the tea when sold, and the consumer, in this indirect way, pays the tax. The same is true of excise taxes, which are laid upon articles manufactured or sold within the country, and upon licenses to pursue certain occupations. An instance of excise taxation is the tax upon liquors, which is paid indirectly by the consumer. The Constitution requires that all duties, imposts, and excises shall be uniform throughout the United States.

**Duties, Tariff.**—Duties are of two kinds, *ad valorem* (Latin, according to the value) and specific. An *ad valorem* duty is one that is levied according to the value of goods, a certain per cent. on the market price as stated in the invoice accompanying the goods. *Ad valorem* duties are computed on the original cost of the articles in the countries from which they come. A specific duty is a specific sum levied on goods according to their quantity or weight, without regard to their value. A tariff is a schedule or table of goods with the duties or customs to be paid to the government for the same on their importation. Duties, or, as they are sometimes called, customs, are paid at custom-houses, which are located at ports along the coasts where

goods can be conveniently landed. Congress cannot lay any tax or duty upon articles exported from any State.

A duty of sixty per cent. on silks, ribbons, and shawls is an example of an *ad valorem* duty. A duty of twenty cents per bushel on wheat, or five cents per pound on cloves, or thirty-five cents per thousand on shingles, is an example of a specific duty.

**The Public Debt.**—Although it is a settled principle that a new government inherits the obligations of the old, it is provided in the Constitution that all debts contracted and engagements entered into before the adoption of the Constitution should be as valid against the United States under the Constitution as under the Confederation.[1] This provision was inserted to fully satisfy the creditors of the United States, foreign as well as domestic, that the new government would faithfully meet all its public obligations and inviolably keep the public faith. The fourteenth amendment contains also an additional pledge.

The Articles of Confederation contained a somewhat similar provision regarding all debts contracted under the authority of Congress, prior to the ratification of the Confederation. See Articles of Confederation, Article XII.

### COMMERCE.

**Commerce under the Confederation.**—The commerce of the States under the Confederation was almost entirely destroyed by reason of the injurious restrictions of foreign nations, and the jealousy and

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[1] The Constitution, Article VI. cl. 1.

conflicting commercial regulations of the several States. American ships were almost driven from the ocean, and American industries were in a most deplorable condition. Distress and bankruptcy were almost universal. Perhaps nothing had more to do with securing the establishment of the Constitution than the inability of the Confederation to regulate commerce.

**Commerce under the Constitution.**—The Constitution confers upon Congress the power to regulate commerce,

1. With foreign nations;
2. Among the several States;
3. With the Indian tribes.

**What the Power to Regulate Commerce Implies.**—Commerce, in the usual acceptation of the word, signifies the exchange of one thing for another—traffic. This word, however, means something more than simply traffic, and includes transportation. It comprehends navigation and all other means of commercial intercourse. Consequently the right to regulate commerce includes the right to regulate transportation and the various channels through which traffic is carried on, as well as the rights and privileges of those engaged in commercial pursuits. This power includes the right to legislate with reference to ship-building, the privileges of American and foreign ships, the rights of seamen, the erection of light-houses, the construction of piers, placing buoys and beacons, the removal of obstructions from bays and rivers, steamboat and railroad traffic, communications by telegraph, and

in fact everything relating to navigation and commercial intercourse.

**Commerce with Foreign Nations.**—Jealousies and rivalries among States stood in the way of all united effort to counteract the embarrassing restrictions placed upon American commerce by foreign nations. Each State adopted such regulations as seemed most likely to promote its own interests, irrespective of the interests of other States. The question was, not what the States as a whole might find to be mutually advantageous, but what advantage could one gain over another. Experience soon demonstrated the folly of such a course, and the States were compelled to abandon the selfish and narrow policy that was destroying their commerce and bringing them into contempt among foreign nations. The conferring upon the national government the power to regulate commerce with foreign nations placed the United States on an equality with other nations.

**Commerce between the States.**—The power to regulate commerce between the States is naturally associated with the power to regulate commerce with foreign nations, and is of equal importance. It would be impossible to separate the two, and avoid misunderstandings and retaliations among the States. Local buying and selling, and local travel and communication, are regulated by State law; but all communication between States, whether by railroads, rivers, or any other means, is subject to the control of Congress.

**Commerce with the Indians.**—Congress has full con-

trol over commerce with the Indian tribes. This authority originally belonged to the British crown. After the Revolutionary War it passed to the Federal government, with, however, some limitations. When the Constitution was adopted, this power, without restrictions, was vested in Congress. The Indian tribes have always been regarded as distinct, and, in a certain sense, as independent political communities.

**The Coining of Money.**—From the earliest times gold and silver have been used as a convenient means of purchase. At first these passed by weight for commodities of all kinds. Afterwards their value was determined by men putting a stamp upon them, in order that it might save others from the trouble of weighing them. In the course of time it became the established custom in civilized countries for the government to divide a mass of metal into small parts, according to fixed standards, stamp them, and authorize their use as a medium of exchange in commercial transactions. Thus coin came into general use. The important power of coining money and of regulating its value, and also of regulating the value of foreign coin, is intrusted to Congress. If this power had been reserved by the States, there would be no uniform standard of value, and great confusion would necessarily arise, owing to different standards of value in different States.

Mints have been established by the general government at convenient points for the coinage of money. The principal United States mint is located at Philadelphia.

**Weights and Measures.**—Although the power to fix the standard of weights and measures has been conferred upon Congress, it has not seen fit to exercise it. It would seem as though uniformity in weights and measures was a subject of sufficient importance to secure the attention of Congress, and to require some action on its part. But beyond adopting the English units of weight and measure for the use of custom-house officials, and legalizing the metric system, without, however, making it obligatory, Congress has not exercised its constitutional power on this subject. The States have adopted the same standards of weight and measure as are used in the custom-houses.

**Bankruptcy.**—When a person is unable to pay his debts he is said to be bankrupt, and provision is made in all civilized countries whereby a debtor's property may be ratably divided among his creditors, and the bankrupt relieved of all further obligation, so that he may have an opportunity to make a new start in business, without a load of debt resting upon him. A bankrupt law "is a law for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts." Congress alone has the power to pass laws on the subject of bankruptcy that shall have authority throughout the United States. The several States, however, are at liberty to pass insolvent laws, provided Congress does not see fit to act upon this subject. There are at present no uniform laws in force on the subject of bankruptcy.

Severe laws were enacted in early days for the punishment of debtors. The inability to meet one's legal obligations was formerly considered a most serious offence. In Rome, at one period, the debtor was completely within the power of his creditors. They could put him to death, and even divide his body among themselves, or sell him and his family into slavery. It is only a few years since that debtors were imprisoned by their creditors until their obligations were met.

### NATURALIZATION.

**Naturalization Defined.**—Naturalization is the act of investing an alien, that is, a person born in or belonging to another country, with the rights and privileges of native-born citizens. All persons born or naturalized in the United States, and subject to its jurisdiction, are citizens of the United States and of the State wherein they reside.[1] Under the Confederation, each State regulated the naturalization of aliens, and, as a consequence, considerable dissimilarity existed among the States, owing to there being no uniform rules.

**A Mistaken Impression.**—In some countries there has been at times decided opposition to allowing foreigners to settle and to enjoy all the rights and immunities of native-born citizens. This has arisen in part from the impression that the opportunities for acquiring wealth were lessened in proportion to the number of persons competing for the same. The more competitors there were, the less each person's share would be. Experience has taught a different lesson. Labor develops the resources of a country, and skilled workmen increase the facili-

[1] The Constitution, Amendments, Article XIV. sec. 1.

ties for acquiring wealth. This fact is now so generally recognized that special inducements are offered foreigners to emigrate to this country.

**How an Alien may Become a Citizen.**—When an alien desires to become a citizen of the United States, the following steps must be taken:

1. He must first declare his intention, before a court, of becoming a citizen of the United States. This declaration must be made two years before he can be admitted to the full rights of citizenship.
2. At the expiration of two years, when he makes his application to be admitted to the full rights and privileges of citizenship, he must make oath or affirmation that he renounces forever all allegiance to any foreign prince or state, and that he will support the Constitution of the United States. He is also required to renounce any title of nobility which he may have.
3. He must prove to the satisfaction of the court that he has resided five years in the United States, and one year in the State or territory where such court is at the time held.

An alien arriving in this country under the age of eighteen years, and having resided in the United States for five years, may take the necessary steps to become a citizen without previously making a formal declaration of intention.

1. Children born in foreign countries, whose parents are

citizens of the United States, are considered American citizens.

2. The children of parents who have become naturalized are considered as citizens, provided they were under the age of twenty-one years at the time of the naturalization of their parents.

### POST-OFFICES AND POST-ROADS.

**Transmission of Letters.**—The transmission of letters and printed matter, and the establishment of post-offices and post-roads, is a matter far beyond the means and appliances of private enterprise, and of necessity falls within the province of the government. In early days, before commerce had assumed the importance of the present day, and but little correspondence passed between individuals or states, letters were conveyed by slaves, peddlers, shipmasters, or couriers. The wonderful development of commerce, and the dependence of trade on the rapid transmission and prompt delivery of the mails, have wrought wonderful changes in the method of conveying letters.

In 1753 a Philadelphian was obliged to wait six weeks to get an answer from Boston. Benjamin Franklin startled the people of the colonies, in 1760, by proposing to shorten the time by four weeks. In 1792 the lowest rate of postage was six cents for thirty miles or less; the highest, twenty-five cents for over four hundred and fifty miles.

**The Establishment of Post-Offices and Post-Roads.**—Uniformity and promptness in the transmission of the mails could only be secured by giving to Congress the power to establish post-offices and post-roads. To have left this important power in the hands of the States would have given rise to endless delays and inconveniences. It is the custom of the

federal government to select and designate certain roads as post-roads, the distribution and delivery of the mails being performed by government employees. Every road within a State, including railroads, canals, turnpikes, and navigable rivers, becomes a post-road when, by law or by the action of the post-office department, provision is made for the transportation of the mails upon or over it.[1] Of so little importance did the power to establish post-offices and post-roads seem at first, that Madison spoke of it "as a harmless power," which might, "perhaps, by judicious management, become productive of great public convenience." This, however, was at a time when men were grateful for weekly mails.

"No other constitutional grant seems to be clothed in words which so poorly express its object, or so feebly indicate the particular measures which may be adopted to carry out its design. To establish post-offices and post-roads is the form of the grant; to create and regulate the entire postal system of the country is the evident intent."—Pomeroy, "Constitutional Law," p. 353.

PATENTS AND COPYRIGHTS.

**Authors and Inventors.** — Upon Congress is conferred the power to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.[2] The exclusive right to what a person writes or invents, and to multiply and sell the same for his own profit, is of

[1] Cooley, "Principles of Constitutional Law," p. 83.

[2] The Constitution, Article I. sec. 8, cl. 8.

recent origin. It originated from the desire to encourage invention and to stimulate genius, on the ground that the general welfare of a country would thus be promoted. Some inducements must necessarily be held out to persons to spend time and money in writing useful books, or inventing new and useful improvements in machinery and the useful arts. The prospect of pecuniary benefit has stimulated men, even at a present loss of time and money, to unusual effort, and given birth to innumerable inventions and literary productions. To give to authors and inventors the exclusive right to their respective writings and inventions for an unlimited period of time would be unwise, since it would perpetuate a monopoly and tend to stop the progress of improvement. It is wisely provided that Congress can grant patents and copyrights for only limited periods.

**Letters Patent.**—Patents are granted by letters patent, which are official documents authorizing the recipients to do some act or to enjoy some right or privilege. By letters patent a person may secure the exclusive right, for a number of years, to make, use, and sell some new invention or discovery. The expression, letters patent, is derived from the Latin, and means open letters (*literae patentes*), that is, letters not sealed up, but exposed to the perusal of all, to whom such letters are usually addressed. It is meet that when any right or privilege is conferred upon an individual to the exclusion of others, it should be embodied in an instrument open to the perusal of all. In the United States, patent and

letters patent commonly mean the same thing. A patent right is a right conferred by a patent.

**Caveat.**—This word was originally a Latin word, and means let him beware. When a person has invented something new, and desires to take time to perfect his invention, and at the same time to protect his interests, he may file in the Patent Office at Washington a description of the invention, preparatory to his applying for letters patent, and thus prevent others from obtaining a patent for the same invention. The instrument which thus operates as a bar to all other applications respecting a like invention is called *a caveat*. *A caveat* remains in force for one year. It may, however, be renewed at the close of a year, and so on from year to year.

**How to Obtain a Patent.**—Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent for the same. The first step to be taken is to make an application. This must be in writing, and signed by the inventor, and addressed to the Commissioner of Patents, Washington, D. C. The applicant must describe fully his invention, and distinctly specify the part, improvement, or combination which he claims as his own. If possible, drawings must be sent, and also a model is required, if the nature of the invention permits. When the invention is a composition of matter, a specimen of each ingredient must be furnished. Patents are granted for a term of seventeen years.

After a patent is secured, all articles manufactured under it must be marked "Patented," the day and year when the patent was granted being also given. Whoever infringes on a patent may be prosecuted in the Circuit Court of the United States, and is liable to pay heavy damages.

The securing of letters patent involves considerable expense and labor. Printed circulars can be obtained from the Commissioner of Patents, giving all necessary information regarding fees required and the steps to be taken. An *Official Gazette* of the United States Patent Office, containing the patents, trade-marks, designs, and labels issued each week, is published by authority of Congress.

**Copyright.**—A copyright is, in a certain sense, a patent under another name. It applies to literary productions instead of inventions. It confers upon a person the exclusive right, for a certain period of time, to print, publish, and sell a literary composition, or to multiply and sell copies of some work of art. A copyright may be had in a book, map, chart, dramatic or musical composition, engraving, print, cut, photograph, painting, drawing, chromo, statue, model, or design intended to be perfected as a work of the fine arts.

**How to Obtain a Copyright.**—In order to secure a copyright, three steps are necessary:

1. Before publication, a printed copy of the title of the book, map, chart, etc., or a description of the article, must be transmitted to the librarian of Congress, together with a fee of one dollar.
2. Within ten days after publication, two copies of the book, map, chart, dramatic or mu-

sical composition, engraving, cut, print, or photograph, and in the case of a print, drawing, and like articles, a photograph, must be sent to the same official.

3. The notice of entry for copyright must appear on the title-page, or the page next following, of every copy of a book, and upon the visible portion of every other article.

Copyrights are granted for a term of twenty-eight years. At the expiration of that time they may be renewed for an additional term of fourteen years.

Two forms of copyright are prescribed, either of which may be used:

1. Entered according to Act of Congress in the year ——, by —— ——, in the office of the Librarian at Washington.
2. Copyright ——, by —— ——.

RELATING TO JUSTICE.

**Authority over Crimes.** — Upon Congress is conferred the power,

1. To provide for the punishment of counterfeiting the securities and current coin of the United States;
2. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;
3. To declare the punishment of treason.

Although these are the only express grants of power bestowed upon Congress to legislate on the subject of crimes, the power to punish all violations of the federal laws is implied in the provision au-

thorizing Congress to make all laws which shall be necessary and proper for carrying into execution the powers vested in it by the Constitution, or in any department or officer of the government.[1] Otherwise the government of the United States would be unable to exercise effectively its constitutional powers.

**Counterfeiting the Securities and Current Coin of the United States.**—By securities is here meant bonds, treasury notes, certificates, and other evidences of indebtedness issued by the United States in pursuance of its power to borrow money. Unless Congress had full authority to protect the securities and current coin of the United States, the credit of the national government would be destroyed, and the power to borrow money would be rendered useless. Congress has enacted stringent laws for the punishment of counterfeiting.

"This power would naturally flow, as an incident, from the antecedent powers to borrow money and regulate the coinage; and, indeed, without it these powers would be without any adequate sanction."—Story, "Commentaries on the Constitution," vol. ii. p. 57.

**Piracies and Felonies on the High Seas, and Offences against the Law of Nations.**—As the States conferred upon Congress the power to regulate commerce, together with the exclusive control of all foreign relations, they necessarily associated with this the authority to protect navigation on the high seas, and to punish citizens of the United States for crimes committed while sailing to and from foreign

[1] The Constitution, Article I. sec. 8, cl. 18.

countries, or for offences against the law of nations. Foreign governments naturally hold the national government responsible for any infringements of the rights of its subjects on the high seas, or any breaches of international law by citizens of the United States. Unless, therefore, the government had the authority to punish such offences, it would be involved in dangerous controversies with foreign nations, and frequent wars would be inevitable. Congress is empowered to define as well as to punish these offences.

**Terms Defined.**—Piracy, according to the law of nations, is robbery or a forcible depredation on the high seas without lawful authority. It is the same offence at sea with robbery on land.[1] Felony, in American law, is generally used to designate any high crime, like murder, manslaughter, arson, burglary, etc., that is punishable by death or imprisonment. By high seas is meant not only the waters of the ocean which are out of sight of land, but the waters of the sea-coast below low-water mark.[2] The high seas are common to all mankind. All nations claim there a common jurisdiction. The law of nations is a system of rules accepted by civilized nations as obligatory in their dealings with one another.

**The Crime of Treason.**—As treason has for its object the overthrow of the government, it has ever been regarded as the highest crime that a subject

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[1] Kent, "Commentaries on American Law," vol. i. p. 183.

[2] Story, "Commentaries on the Constitution," vol. ii. p. 84.

could commit, and been visited with the severest, and, at times, most savage and degrading punishments. A person convicted of treason was not only deprived of his life and his body horribly mutilated, but he forfeited all his property, and his family were reduced to poverty. His children could not inherit any estate from their ancestors, because the parent's blood was corrupted as a consequence of treason, that is, had lost all inheritable qualities. For example, a grandson could not inherit lands and tenements from his grandfather at his death, when the title must descend through the father, as a person attainted was incapable of inheriting or transmitting property from an ancestor. It was thought that these inhuman punishments, involving the innocent with the guilty, would restrain men from the commission of treasonable acts.

In England, women convicted of treason were at one time burned alive. According to Macedonian laws, not only was the offender put to death, but also his children and all his relatives.

**Wrongs Perpetrated in the Name of Treason.**—In time of great political excitement, acts of slight misconduct, and even of an innocent character, have been comprehended under the term of treason. Many offences that were not suspected to be in any sense treasonable have been construed as such by judges holding office at the pleasure of the crown, at the instance of tyrannical princes, either to gratify a feeling of revenge, or to obtain the possessions of their victims. To guard against such grievous wrongs, the Constitution expressly defines what shall constitute treason.

**Treason as Defined by the Constitution.** — Treason against the United States, as defined by the Constitution, consists only,

1. In levying war against the United States;
2. In adhering to their enemies, giving them aid and comfort.

With regard to the nature of the evidence, it is furthermore provided that no person can be convicted of treason unless on the testimony of two witnesses to some overt act, or on confession in open court.[1] Thus the Constitution, while defending the supremacy of the national government, carefully guards the liberty of the citizen against the evils of forced and arbitrary constructions of treason, and requires conclusive evidence of the guilt of the accused.

**The Punishment of Treason.** — The punishment of treason is not prescribed by the Constitution, but it was left with Congress to declare what it should be, with the limitation that no attainder of treason—that is, no conviction and judgment in court against the offender—shall work corruption of blood or forfeiture, except during the life of the person attainted.[2] The punishment, as fixed by act of Congress, is death by hanging, or, at the discretion of the court, imprisonment at hard labor for not less than five years, and a fine of not less than ten thousand dollars.

**Inferior Tribunals.**—The Constitution provides for

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[1] The Constitution, Article III. sec. 3, cl. 1.

[2] The Constitution, Article III. sec. 3, cl. 2.

the establishment of a Supreme Court, but confers upon Congress the power to establish inferior tribunals. The nature and jurisdiction of these courts will be described in the chapters on the judicial department.

### RELATING TO WAR AND MILITARY AFFAIRS.

#### 1. *Declaration and Conduct of War.*

**Declaring War.**—To Congress is intrusted the power of declaring war, granting letters of marque and reprisal, and making rules concerning captures on land and water. In monarchical forms of government, the power to declare war is usually vested in the king, but it has been so frequently resorted to by rulers to gratify personal ambition and to satisfy imaginary wrongs, that the framers of the Constitution were unwilling to intrust so dangerous a power to the chief executive. Then again the Constitution was adopted at a time when the States were suffering from the effects of the war with Great Britain, and they were vividly impressed with the necessity of guarding, with the utmost care, the exercise of a power so full of disastrous consequences to a people, if hastily or wrongfully made use of. As the people have to bear the burdens of war, it is but right that their representatives, and not the chief executive, should exercise the prerogative of declaring war.

**Letters of Marque and Reprisal.**—In time of war, the practice of commercial nations has long been to make use, not only of public, but also of private armed vessels for the purpose of doing injury to

the enemy. This usage in Europe runs back to the time when permanent public navies scarcely existed.[1] Private vessels thus commissioned are called privateers. The commissions or letters authorizing private persons to seize the ships and property of an enemy are called letters of marque and reprisal. Even in time of peace, letters of marque and reprisal are sometimes granted by a government to its subjects when they have been injured by the subjects of another nation, and justice is denied, in order that the injured parties may obtain satisfaction to the extent of their injuries.

1. Privateering has for a long time been regarded by thoughtful men as a great evil, and nearly all Christian states, with the exception of the United States, have agreed to abandon it.

2. Marque (derived from a word meaning border, boundary) is a license to go across the frontier of a country for the purpose of making reprisals, and at first referred to expeditions on the land. Reprisal signifies a taking in return, by way of retaliation.

**Concerning Captures.**—When captures have been made, they become the property of the captor only by the sentence of a competent court. This is to guard against the excesses and abuses which are incident to warfare. The courts which have jurisdiction in matters pertaining to prizes are the United States District and Circuit Courts. The power to make rules concerning captures on land and water is naturally associated with the power to declare war.

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[1] Woolsey, "International Law," p. 206.

### 2. *The Regular Army and Navy.*

**To Raise and Support Armies.**—Under the Confederation, Congress could declare war and decide what number of troops were necessary, but it could not raise troops. The States alone could do this. This division of power gave rise to endless difficulties, and proved a serious obstacle to the vigorous prosecution of the war with Great Britain, some States furnishing their full quota of troops, while others, less exposed to the inroads of the enemy, were negligent in furnishing their just proportion. The Revolutionary War clearly demonstrated that it was useless to confer upon Congress the power to declare war without also authorizing it to raise and support armies. This power includes the enlistment and support of troops, the determination of their number and term of service, the payment of bounties and pensions, the purchase of arms, ammunition, and supplies, the construction of arsenals, barracks, and forts, the maintenance of military schools, and in fact everything that may be needed to make an army effective in the conduct of war.

**A Restriction.**—To guard against the improper use of the army by the President, who by virtue of his office is commander-in-chief of the army and navy, and to remove all danger of a large standing army being kept on foot to menace the liberties of the people, the Constitution provides that no appropriation of money for the support of the army shall be made for a longer term than two years. By refusing to vote money for the support of the army,

it is within the power of Congress to cause the dismemberment of a force that is being improperly used by the chief executive. As appropriations are now made annually, there is very little danger of the army being used as an instrument of oppression, or to further the personal interests of any one person.

**To Provide and Maintain a Navy.**—Whatever reasons have weight for raising and supporting armies, have equal weight for providing and maintaining a navy. No maritime nation is safe unless its commerce is under the protection of an efficient and well-equipped navy, "from which, however strong and powerful, no danger can ever be apprehended to liberty." The power to provide and maintain a navy includes the enrolment of seamen, the purchase of arms and supplies, the building of vessels of war, the construction of navy and dock-yards, the maintenance of naval schools, and whatever else is needed to make a navy effective.

**The Government and Regulation of the Land and Naval Forces.**—Congress is furthermore empowered to make rules for the government of the land and naval forces. Under this grant of power, Congress may adopt a system of tactics, arrange and classify the land and naval forces, determine the number, duties, and pay of officers, define military offences and provide for their punishment, organize courts-martial and prescribe their jurisdiction. It has accordingly enacted a code of rules for the regulation of the army and navy, in peace as well as in war. This code constitutes what is known as military law.

### 3. *The State Militia.*

**The Militia.**—It has never been the policy of free governments to maintain a large military force in time of peace, owing to the popular prejudice against standing armies, and the necessity of expending large sums of money for their support. Their main reliance for defence, both against foreign invasion and domestic turbulence, has been upon the militia, "the cheap defence of nations." To meet all exigencies, Congress is authorized to provide for calling forth the militia,

1. To execute the laws of the United States;
2. To suppress insurrections;
3. To repel invasions.

Congress has conferred upon the President the power to call forth the militia whenever any of these exigencies arise. When in the service of the United States, the militia are under the command of the President. They are subject to the same rules and regulations as soldiers in the regular army, and receive the same pay and rations.

A standing army is "a body of men distinct from the body of the people; they are governed by different laws; blind obedience and an entire submission to the orders of the commanding officer is their only principle. The nations around us are already enslaved and have been enslaved by these very means; by means of their standing armies they have every one lost their liberties. It is, indeed, impossible that the liberties of the people can be preserved in any country where a numerous standing army is kept up."—Pulteney, "Parliamentary History," vol. viii. p. 904.

**The Power of Congress over the Militia.**—Congress

may provide for the organization, arming, and discipline of the militia, and for the government of such part of them as may be employed in the service of the United States; but to the States respectively are reserved the appointment of officers, and the training of the militia according to the discipline prescribed by Congress. It will be readily seen that uniformity among the militia of the several States, in organization, arms, and discipline, is absolutely necessary in order to secure harmony of action when called into the service of the United States. During the American Revolution, the militia of the States, when called into the field, was frequently unwilling to recognize any authority but that of their own States, and as a result was inefficient and unreliable as troops.

### CEDED DISTRICTS.

**District of Columbia.**—A tract of territory on the Potomac River, ceded to the United States government by the State of Maryland, constitutes the present District of Columbia. This territory contains the city of Washington, the seat of the national government, where the President resides, and where the departments of government have suitable buildings for the transaction of business. Over this district Congress has exclusive jurisdiction. The government of the Confederation was without a capitol. This was a source of much inconvenience.

**Other Ceded Places.**—Congress is also empowered to exercise exclusive legislation over all places purchased by the consent of the legislature of the State

in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.[1] Unless Congress had exclusive control over places thus acquired, serious misunderstandings as to jurisdiction might arise between the national government and the States in which these ceded places might be. The inhabitants of such places cease to be inhabitants of the State, and they no longer possess the civil and political rights which otherwise would belong to them under the laws of the State. By the consent of the legislature of the State, the State governments lose all jurisdiction. But the right of exclusive legislation within the territorial limits of any State for the objects above enumerated can only be acquired by the consent of the State legislature. Unless this consent is given, a State still has jurisdiction over places held by the United States within its limits. The cession of territory is a free act of the States.

Government gains ownership of land by purchase or by exercise of the right of eminent domain. The States cede right of jurisdiction. The national government is proprietor of the Detroit post-office building, but the State has jurisdiction; while the jurisdiction over Fort Wayne belongs to the United States.

POWERS IMPLIED.

**Necessary and Proper Laws.**—The Constitution further provides that Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in

[1] The Constitution, Article I. sec. 8, cl. 17.

the government of the United States, or in any department or officer thereof.[1] It would seem at first as though it were unnecessary to incorporate a provision like this into the Constitution, for the reason that the power to do a thing necessarily implies the use of such means as are needful to execute it. This clause was doubtless designed to remove all uncertainty respecting the right of Congress to make use of such measures as in its judgment seemed best for carrying into execution the constitutional powers of the national government. It would have been impracticable to attempt to enumerate all the means by which the various powers conferred by the Constitution should be exercised.

1. However government is constituted, "infinitely the greater part of it must depend on the exercise of powers which are left at large to the prudence and uprightness of ministers of state."—Burke.

2. "Those who made the Constitution conferred upon the government of their creation sovereign powers; they prescribed for it a sphere of action, limited, indeed, as respects subjects and purposes, but within which it should move with supreme authority, untrammelled except by the restraints which were expressly imposed, or which were implied in the continued existence of the States and of free institutions. But there cannot be such a thing as a sovereign without a choice of the means by which to exercise sovereign powers."—Cooley, "Principles of Constitutional Law," p. 92.

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[1] The Constitution, Article I. sec. 8, cl. 18.

## CHAPTER XI.

### RESTRICTIONS UPON THE POWERS OF CONGRESS.

**Prohibited Powers.**—While Congress is supreme in the exercise of certain specified powers, and ample authority is given to carry them into execution, there are certain restrictions imposed upon the exercise of the powers of Congress. The Constitution forbids Congress,

1. To prohibit the importation of slaves prior to the year 1808;
2. To lay any capitation or other direct tax, except as provided for in the Constitution;
3. To lay any tax or duty on articles exported from any State;
4. To give preference, by any regulation of commerce or revenue, to the ports of one State over those of another;
5. To suspend the writ of *habeas corpus*, except for certain specified reasons;
6. To pass any bill of attainder or *ex post facto* law;
7. To grant any title of nobility.

The above prohibitions may be conveniently arranged under two heads: (1) Restrictions upon the commercial and revenue powers of Congress; and (2) Limitations upon the general authority of Congress.

### RESTRICTIONS UPON COMMERCIAL AND REVENUE POWERS.

**The Slave Trade.**—During the colonial period the crown encouraged the importation of slaves, and refused to sanction measures proposed by the colonies to check the pernicious traffic. This constituted one of the grievances of the colonies which Jefferson desired to have incorporated in the Declaration of Independence. When the Constitution was framed, the slave traffic was countenanced and carried on by every civilized nation in Europe. Previous to this time, some of the States had prohibited the importation of slaves, while other States still imported them. It was insisted by many of the delegates in the Constitutional Convention that to admit in the Constitution the right of the States to import slaves would dishonor the principles of the Revolution and would be entirely inadmissible, while some opposed the traffic on the ground that it gave a State an opportunity to increase its representation in Congress by importing slaves from Africa. Other delegates insisted that each State should be left free to import such persons as it should think proper to admit, and they furthermore declared that their States would never adopt the Constitution if it prohibited the slave trade. The settlement of this vexed question was attended with the gravest difficulties. Finally the extreme desire to preserve the Union, and to secure an efficient government, coupled with the belief of many that slavery would only have a temporary exist-

ence, moved the delegates to compromise the matter by providing that the migration or importation of such persons as any of the States then existing might think proper to admit, should not be prohibited by Congress prior to the year 1808, and that a tax not to exceed ten dollars might be imposed for each person thus imported.[1] At the expiration of the stipulated time, the slave trade was abolished by unanimous legislation. Subsequently Congress declared the traffic to be piracy and punishable with death. Thus the United States was the first of modern nations to interdict and abolish the slave trade.

In the year 1806, Jefferson, at that time President of the United States, addressed the following communication to Congress: "I congratulate you, fellow-citizens, on the approach of the period at which you may interpose your authority constitutionally to withdraw the citizens of the United States from all further participation in those violations of human rights which have been so long continued on the unoffending inhabitants of Africa, and which the morality, the reputation, and the best interests of our country have long been eager to prescribe."

**Capitation or other Direct Tax.** — It has already been stated that when a tax is levied on all persons alike, without regard to the amount of property possessed by each, it is called a capitation or poll-tax; and that the term direct tax, as used in the Constitution, refers merely to land and capitation taxes, the term being used in a restrictive sense. The Constitution provides that direct taxes shall be apportioned among the several States according

[1] The Constitution, Article I. sec. 9, cl. 1.

to their respective numbers, and Congress is forbidden to lay any capitation or other direct tax except as thus provided. This is to secure an equal distribution of the burden of taxation.

**Articles Exported.**—As the exports of a State vary according to its geographical position, climate, character of the soil, and its manufactures, it would be impossible to so adjust taxes on exports that the interests of all the States would be equally protected. If the power were conferred upon Congress to lay a tax or duty on articles exported from any State, there might be danger of some States, through their representatives, combining to legislate in favor of their own exports to the injury of other States. Then, again, if duties should be laid by Congress on articles conveyed to foreign countries, the price of such articles would in many instances have to be increased to such an extent that it would be impossible to compete with other nations in foreign markets.

**Preferences.**—One of the essential conditions of a permanent union of sovereign States is that no preference shall be given to one State over another. Anything, therefore, that might tend to advance the interests of one State at the expense of another should be carefully avoided. It is wisely and justly provided that no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.[1] To enter and clear,

[1] The Constitution, Article I. sec. 9, cl. 6.

as here used, are commercial terms. To enter is to report a ship and its cargo at the custom-house, and obtain permission to land. To clear is to get a permit for a ship to sail. This is obtained by complying with the regulations established at the custom-house, and securing what is called a clearance. Without such a document, no ship can lawfully leave a port. By obliging vessels to enter and clear, it is possible to obtain a knowledge of all the exports and imports of a country. During colonial times American vessels were obliged to enter and clear at a British port, no matter how inconvenient it might be, before they could trade with European ports.

### LIMITATIONS UPON THE GENERAL AUTHORITY OF CONGRESS.

**The Writ of Habeas Corpus.**—When a person is imprisoned for a supposed offence, a writ may be issued by a judge, having competent authority, commanding the officer who holds the person in custody to bring him before the court, with a statement of the cause of his detention, and to submit to whatsoever the judge may order. If, in the opinion of the judge, the cause of detention is not sufficient, the prisoner is released by order of the judge. This writ, "the well-known remedy for the violation of personal liberty," is called the writ of *habeas corpus*. The expression *habeas corpus* (you may have the body) is from the Latin, the language in which writs were formerly written. The words *habeas corpus* were the important words of the writ, and are now used to designate it.

A writ is a written instrument issued by a court, commanding a person to do something therein contained. A writ of *habeas corpus* may be granted either upon the application of the person restrained of his liberty or of some one in his behalf.

**Importance of the Writ.**—As the object of the writ of *habeas corpus* is to inquire into the cause of a person's imprisonment with a view to his liberation, it is very properly regarded as the bulwark of personal liberty. Formerly the person of a subject was completely at the mercy of the sovereign. When a person was arrested and imprisoned by the command of the king, there was no appeal. Happily it is now a well-established principle that no person shall be imprisoned except for just and sufficient cause. An officer detaining any one in custody may be called upon at any time by the proper authority to produce his prisoner in court, and show cause why the prisoner should not be released.

"Next to personal security, the law of England regards, asserts, and preserves the personal liberty of individuals. This personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due process of law."—Blackstone, "Commentaries on the Laws of England," bk. I. p. 134.

**When this Writ may be Suspended.**—The suspension of the writ of *habeas corpus* is fraught with so much danger to personal liberty that only in case of extreme and pressing necessity is there any excuse for it. To take from a person unlawfully imprisoned the right to an immediate hearing and discharge, and to authorize arrests without due proc-

ess of law, is a power that should be restricted within very narrow limits. Sometimes this writ has been suspended for trivial reasons, and great injustice and grievous oppression have followed. In order to protect personal liberty, and yet at the same time have regard for the public safety, the Constitution expressly declares that the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.[1] The suspension of the writ may be ordered by Congress, or by the President of the United States, when authorized to do so by Congress.

**Bill of Attainder.**—A bill of attainder is an act of a legislature inflicting capital punishment upon a person for an alleged crime without a judicial trial. Forfeiture of property and corruption of blood were the consequences of attainder. In other words, the offender forfeited, not only his life, but also his property, and he could neither inherit property from his ancestors nor transmit any to his children. Bills of attainder are unjust and tyrannical in the highest degree in that they deprive a person of life, liberty, and property without a trial, and sometimes without even the formality of proof, or an opportunity for defence. They have usually been passed in times of great political excitement, and when there was not sufficient evidence against an obnoxious person to secure conviction in the ordinary courts of justice, or when persons were not

[1] The Constitution, Art. I. sec. 9, cl. 2.

subject to punishment under the general law of the land. To allow Congress to exercise a power so at variance with every principle of justice would be wholly inconsistent with the spirit of a government which was formed to establish justice and to secure the blessings of liberty to every citizen. Then, again, it is not properly within the province of a legislative body to pass sentence of death upon a person for alleged offences. The trial and punishment of criminals belongs to a separate department of government, the judicial, and should not be intrusted to a body whose members are chosen for another purpose, namely, to make laws.

**The Great Act of Attainder of 1688.**—One of the most atrocious acts ever passed in any civilized country, as well as one of the most noteworthy illustrations of legislative punishment, was the Great Act of Attainder, passed in 1688 by the Parliament of James II., in Dublin. A list was framed containing between two and three thousand names. It included persons of all ranks, together with women and children. No inquiry was made as to the guilt of those who were proscribed. Any member who wished to rid himself of a creditor, a rival, or a private enemy, gave in the name to the clerk at the table, and it was generally inserted without discussion. The persons named in the list were required to surrender themselves at certain specified times, and if they failed to do so they were to be hung without a trial and their property confiscated. To add to the horrible character of the whole proceeding, extreme care was taken that

the persons attainted should be kept in ignorance of the fact till the time fixed in the act for their appearance had passed.[1]

**Ex Post Facto Law.**—An *ex post facto* law is a law declaring an act to be criminal, and punishable as such, which when committed was innocent; or it is a law making the punishment for an offence greater than it was when the offence was committed. The Supreme Court of the United States has defined an *ex post facto* law as "one which renders an act punishable in a manner in which it was not punishable when it was committed." Such laws have been passed by legislatures subservient to the crown in order to get rid of obnoxious persons. Acts committed by them which were not punishable, at the time committed, by any existing laws, have been declared to be crimes and prosecuted as such. Laws like these are manifestly unjust, and totally at variance with the principles of republican government.

In some States the crime of murder is punishable by imprisonment for life. If in these States a law should be passed changing the punishment of murder to death by hanging, and inflicting capital punishment on all those who had been sentenced to imprisonment for life, such a law would be an *ex post facto* law. The expression *ex post facto* is from the Latin, and means done after another thing. *Ex post facto* laws are, therefore, laws passed after the act is done.

**Titles of Nobility.**—Titles of nobility create humiliating class distinctions, and are at variance with the spirit of republican institutions. The declara-

[1] Macaulay, "History of England," vol. iii. pp. 200–203.

tion that all men are created equal was the watchword of the Revolutionary War, and is a distinguishing feature of American liberty. Not only is the government of the United States prohibited from granting any title of nobility, but also all persons holding offices of profit or trust under the United States are forbidden to accept, without the consent of Congress, any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.[1] It would seem as though the love of country would be a sufficient guarantee for the honor and faithfulness of public ministers, especially in their relations with foreign nations, and that there would be but little danger of any foreign court being able to influence, by bribes or otherwise, government officials in the performance of their duties. There have, however, been frequent instances of the officials of one country being tampered with by the government of another.

In the Treasury at Washington are still preserved valuable jewels which were presented to President Van Buren by a foreign potentate, and in the National Museum can be seen costly gifts presented at different times to officers of the United States, and by them given to the national government.

**Appropriations.** — No money can be drawn from the Treasury of the United States but in consequence of appropriations made by law. This restriction applies more particularly to the executive department. In despotic governments the monarch makes such levies upon his subjects as he thinks proper, and he is responsible to no one for

[1] The Constitution, Art. I. sec. 9, cl. 8.

the manner in which he disposes of the money of the people. With the growth of English liberty the public funds have been less at the disposal of the chief executive, and more under the control of the trustees of the people. Congress "keeps the purse-strings of the public treasury," and no money can be drawn from it unless in accordance with some appropriation made by act of Congress, no matter how urgent the public needs may be. In order that all departments of government, especially the legislative, may have a due sense of their responsibility to the people, the Constitution requires that a regular statement of all receipts and expenditures shall be published from time to time.

**Other Express Limitations.** — The first amendment forbids Congress to make any law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press, or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.[1] Other restraints are imposed by the Constitution, but they apply to the other departments of government as well as to Congress. These will be more conveniently described hereafter.

[1] The Constitution, Amendments, Art. I.

## CHAPTER XII.

### THE STATES AND TERRITORIES.

**National Authority.**—While there has always been a tendency to unite to local self-government some national authority, at the same time there was great reluctance to establish a vigorous central government, for fear that it would override the State governments. It was an exceedingly difficult and delicate task to so adjust the relations of the national government to jealous and vigilant local governments that the national authority would be strong enough to protect and promote the common interests of all the States, and at the same time not materially interfere with the local interests and needs of each State. The deplorable condition of affairs at the close of the war with Great Britain forced the States to agree upon a national form of government strong enough to command obedience at home and respect abroad. To this central government were delegated extensive powers, and in matters affecting the general interests it became the supreme power of the land, while the States still possess all the powers not delegated to the general government. As a result we have, (1) National authority as represented by the government of the United States; and (2) Local self-government as represented by the several State governments.

**Division of Powers between States and Nation.**—The powers delegated to the United States are enumerated in the Constitution. All other powers, except those prohibited to the States by the Constitution, are reserved to the individual States or to the people. Powers granted to Congress may, with some exceptions, be exercised by the States, provided Congress does not see fit to exercise them, but all such legislation must yield to any subsequent legislation that Congress may adopt. For example, the States have legislated concerning bankruptcies, as there is at present no national bankrupt law. If Congress should at any time pass such a law, State legislation on the subject would become void. The jurisdiction of the national government is limited to a few enumerated objects that concern the general welfare of all the States. The State governments have control and regulation of all the ordinary and everyday concerns of life, the protection of property and of the lives and liberties of the people, the erection and maintenance of schools and of benevolent and reformatory institutions, the enactment of laws of inheritance, the regulation of municipal institutions, and in fact all other matters relating to the internal order, improvement, and prosperity of the States.

**Absolute Prohibitions.**—Some of the restraints imposed by the Constitution upon the States may be removed by the consent of Congress; other prohibitions are absolute, and can in no case be relaxed or removed by Congress. The Constitution unconditionally forbids the States,

1. To enter into any treaty, alliance, or confederation;
2. To grant letters of marque or reprisal;
3. To coin money, emit bills of credit, and to make anything but gold and silver coin a tender in payment of debts;
4. To pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts;
5. To grant any title of nobility.

For the States to make treaties, alliances, or confederations would put in jeopardy the friendly relations of the States to one another, inasmuch as some States might enter into engagements with foreign powers that might be at variance with the interests of other States; to allow the States to grant letters of marque and reprisal would place it within the power of any one State to involve all the others in war with foreign countries; to permit the States to coin money would destroy all uniformity in the currency. The reasons that had weight in prohibiting the United States from passing any bill of attainder and *ex post facto* law, or granting any title of nobility, have equal weight as against the States.

Prohibitions in the Constitution are prohibitions on federal action, unless the States are especially mentioned.

**Bills of Credit.**—During the Revolutionary War, the States, as well as Congress, issued bills of credit; that is, paper obligations to pay, at some future time, to persons holding them, certain specified sums of money. These paper obligations were issued and

intended to circulate as money among the people, but, owing to the failure of the States to redeem them, they rapidly depreciated in value and finally became worthless. It is said that at one time during the war sixteen hundred dollars of it was asked for a suit of clothes. As a natural result immense losses were inflicted on the individuals holding this paper currency, business was broken up, fortunes were destroyed, and public and private credit utterly prostrated. To avoid a recurrence of such evils, this prohibition was framed.

Bills of credit, in the sense of the Constitution, do not include bank-notes issued by a State bank, or written contract, by which a State binds itself to pay money, at a future day, for services actually received or for money borrowed for present use; but simply obligations of the State intended to circulate from hand to hand as money, like the paper currency issued by the colonies and States down to the date of the Constitution.

**Gold and Silver a Legal Tender.** — That no State shall make anything but gold and silver coin a tender in payment of debts is naturally associated with the prohibition that no State shall emit bills of credit. The same reasons which show the necessity of denying to the States the right to coin money prove with equal force that they ought not to be at liberty to substitute a paper medium in the place of gold and silver.[1] A healthy and sound currency is absolutely indispensable in commercial transactions. This was amply proven by the appalling disasters and general bankruptcy which a

[1] Madison, "The Federalist," No. 44, p. 350.

changing and depreciating paper currency brought upon the whole country, previous to the adoption of the Constitution.

**The Obligation of Contracts.**—A contract is an agreement, upon sufficient consideration, to do or not to do a particular thing.[1] Unless individuals and states should recognize the binding force of contracts, there would be no security in commercial transactions, and no ground for that trust which lies at the basis of society. Under the Articles of Confederation, the States repeatedly legislated without any regard for the rights of persons under existing contracts. The relation of debtor and creditor was subject to constant changes. So grievous were the evils resulting from such legislation that the framers of the Constitution determined to impose an effectual check on any attempt of State legislatures to interfere with the obligation of contracts. Contracts are of endless variety, and affect nearly every detail of private and business life. They may be formed between a state and its citizens as well as between private individuals. Although this prohibition, that no State shall pass any law impairing the obligation of contracts, seems to be free from all ambiguity, it has given rise to more discussion and controversy, and been the occasion of more protracted litigation, than any other clause of the Constitution.

**Conditional Prohibitions.**—The Constitution fur-

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[1] Blackstone, "Commentaries on the Laws of England," bk. II. p. 441.

thermore forbids the States, without the consent of Congress,

1. To lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, or to lay any duty on tonnage;
2. To enter into any agreement or compact with another State, or with a foreign power;
3. To keep troops or ships of war in time of peace, or to engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

The first is to guard against all unjust discriminations on the part of any of the States in their commercial relations with one another; the second is to prevent any combination between States, or agreement with foreign powers, to the injury of other States; the third is to prevent any State from maintaining a military force that would be likely to endanger the general safety, or be a cause of jealousy between bordering States. Treaties, alliances, and confederations, which are absolutely prohibited by the Constitution, differ from the agreements and compacts which may be entered into with the consent of Congress in this: the first are made for perpetuity or for a considerable time, the latter are made for temporary purposes. Both are designed to cut off all connection or communication between a State and a foreign power.[1] The federal govern-

[1] Holmes *v.* Johnson, 14 Peters, p. 572.

ment is supreme in all that pertains to foreign affairs, to duties on imports, and to war.

By troops is not meant militia, which the States are expected to maintain. A tonnage duty is a duty on ships estimated by the ton.

**Inspection Laws.** — Inspection laws are laws designed for the inspection of various commodities, as flour, meat, etc., with a view to improve the quality of the products of the country, and to fit the same for exportation or for domestic use. To meet the expense of enforcing these inspection laws the States may levy imposts or duties on commodities brought into and carried out of a State. While such a provision seemed necessary to meet the charges of inspection, there was danger that those States having convenient seaports would, under color of inspection laws, levy heavy contributions on the productions of those States that were obliged to pass through their ports to foreign markets, or on imports from other States, for the purpose either of securing a revenue, or of protecting and encouraging their own manufactures and commerce. Thus would be revived the evils that aroused resentments and created dissensions among the States under the Confederation. To avoid these dangers the following safeguards were adopted:

1. That only such duties should be levied as were absolutely necessary for executing the inspection laws;
2. That the net produce of all duties and imposts, laid by any State on imports or ex-

ports, should be for the use of the Treasury of the United States;

3. That all such laws should be subject to the revision and control of Congress.[1]

These restrictions apply equally to any imposts or duties that may be levied with the consent of Congress.

**Other Provisions.**—For the sake of uniformity and of preserving a fraternal feeling among the States, the Constitution provides:

1. That full faith and credit in every State shall be given to the public acts, records, and judicial proceedings of each State.
2. That citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States;
3. That a person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime;
4. That no person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.[2]

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[1] The Constitution, Article I. sec. 10, cl. 2.

[2] The Constitution, Article IV. secs. 1, 2.

**State Records.**—As each State has a separate organization, serious misunderstandings and grave contentions would necessarily arise, unless full faith and credit were given in every State to the public acts, records, and judicial proceedings of each State. It is not the intention of this provision that the jurisdiction of one State shall extend into the domain of another, but that whatever one State does in the exercise of its lawful jurisdiction shall be valid in every other State. Judgments rendered in the courts of one State cannot be called in question in the courts of any other. If questions and titles once tried and decided could be again open to litigation, by either of the parties removing from the jurisdiction of one State to that of another, endless confusion would follow. The judicial proceedings spoken of in this clause refer only to civil cases. Congress has prescribed the manner in which the acts, records, and proceedings shall be authenticated, and declared that the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.[1]

**Privileges of Citizens of States.**—Among the rights belonging to an individual as a citizen of a State may be mentioned, the right of a citizen of one State to pass through or to reside in any other State, for purposes of trade, agriculture, professional pur-

[1] "Revised Statutes of the United States," sec. 906.

suits, or otherwise; the right to institute and maintain actions of every kind in the courts of the State; to acquire and dispose of property; to be exempt from higher taxes or impositions than are paid by the citizens of other States; to enjoy the equal protection of the laws.[1] The provision that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States is a declaration to the States that whatever rightst he several States grant to their own citizens, or whatever restrictions they impose on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within their jurisdiction.[2] It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this.

**Privileges of Citizens of the United States.**—As the rights of State citizenship correspond to the functions and duties of the State governments, so the rights of federal citizenship correspond to the functions and duties of the federal government. To avail one's self of postal facilities, to engage in foreign and interstate commerce, to have access to the courts of justice, to enjoy all rights secured to citizens by treaties with foreign governments, to petition for redress of grievances, to demand the care and protection of the federal government when upon the high seas or within the jurisdiction of a

[1] Carfield *v.* Coryell, 4 Washington C. C. p. 380.

[2] Slaughter-House Cases, 16 Wallace, p. 36.

foreign government, are among the privileges of citizens of the United States.[1] The Constitution declares that no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States.[2]

**Fugitive Offenders.**—It is a question concerning which there has been much dispute whether, independent of treaty stipulations, a nation is under any obligation to surrender a fugitive from justice who has sought refuge there. Whatever view may be taken as to the obligations of foreign nations, it is of vital importance in a national union like our own that criminals fleeing from justice, and found in another State, should be delivered up to the State having jurisdiction, to answer for their crimes. Otherwise the States would be asylums for rogues, and criminal offences would rapidly increase. The mutual effort to suppress crime tends to promote harmony and good feeling among the States.

**Fugitives from Service or Labor.**—At the time the Constitution was framed a great deal of concern was felt by the Southern members of the Constitutional Convention with respect to the security of their slave property. Although at this time slavery existed in all the States, with the exception of Massachusetts, it was likely soon to disappear from the States of New Hampshire, Rhode Island, Connecticut, New York, and Pennsylvania. In these States, therefore, the relation of master and slave not be-

[1] Slaughter-House Cases, 16 Wallace, p. 36.

[2] The Constitution, Amendments, Article XIV.

ing recognized, there would be no means of enforcing the return of a slave to the State from which he had fled. If a relation between persons, existing by the law of a particular State, was to be broken up by an escape into another State, because such a relation was unknown to or prohibited by the law of that State, the right of the master to the services of the slave would be wholly insecure.[1] Fearing that the Southern States would not accept the Constitution without a special provision whereby slaves that escaped into other States might be reclaimed, this clause respecting fugitives from service or labor was unanimously adopted. Happily with the abolition of slavery that part of the provision relating to slaves has become obsolete, and although the provision included apprentices as well as slaves, it is of little force or value.

**The Admission of States.**—New States may be admitted by Congress into the Union. But no new State can be formed or erected within the jurisdiction of any other State, nor can any States be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned, as well as of Congress.[2] These two precautions were designed to quiet,

1. The fears of the larger States that new States might be formed by the partition of a State, without its consent;

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[1] Curtis, "History of the Constitution," vol. ii. p. 450–452.

[2] The Constitution, Article IV. sec. 3, cl. 1.

2. The fears of the smaller States that two or more States, without their consent, might be united to form a large State.

That no new State shall be formed without the concurrence of the federal authority and that of the States concerned, is in keeping with the principles which ought to govern such transactions.[1] The Articles of Confederation contained no provision relating to the admission of new States. This was apparently overlooked.

**How States are Admitted.**—Congress has discretionary power over the admission of a new State. It may refuse to admit, or it may impose conditions before admitting it. Questions as to whether the Constitution is republican in form, whether any serious evil exists, whether there is a sufficient population, and others of a like character, will naturally arise. States have usually been admitted either,

1. By Congress passing what is called an enabling act, authorizing the people to frame and adopt a constitution, and providing for the admission of the State when certain conditions are complied with;
2. By the people of a territory forming a constitution and electing officers to administer it, and then submitting the same to Congress, and applying for admission under it.

No State can now be admitted into the Union with-

[1] Madison, "The Federalist," No. 43, p. 340.

out having the necessary population to entitle it to at least one member of the House of Representatives. When a State is admitted, the public lands, with the exception of what are granted by Congress to the State for school or other purposes, still remain the property of the United States, and are subject to the same provisions that all other public lands are subject to.

**Territory and other Property.**—Congress has full power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, with the proviso that nothing in the Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.[1] This proviso was rendered necessary by reason of the controversies concerning the western territory, to which reference is made in the following paragraph.

**The Western Territory.**—Several of the States laid claim to large tracts of unoccupied territory which really lay outside of their proper boundaries, but were embraced within the vague descriptions of their charters. Those States which had none of this territory insisted that as it had been wrested from the crown by the blood and treasure of all the States, it should be considered common property, and that the proceeds of its sale ought to go to defray the expenses incurred in the Revolutionary War by all the colonies. This subject gave rise to long and ardent controversies. Finally Congress,

[1] The Constitution, Article IV. sec. 3, cl. 2.

in order to induce the States to cede the western territory to the United States, pledged its faith that if the cession were made, the lands should be disposed of for the common benefit of the United States, and should be settled and formed into distinct republican States, to become members of the federal Union, with the same rights as other States. All other States, except North Carolina and Georgia, ceded their western lands to the United States, prior to the adoption of the Constitution.[1] It is to Georgia and North Carolina that the proviso refers that nothing in the Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State. Soon after the adoption of the Constitution, these two States relinquished their claim to the lands in dispute.

1. The province of Louisiana was purchased from France; Florida, from Spain; Texas was annexed at its own request; a large tract of territory was obtained from Mexico; the Russian possessions in America have been added within a few years.

2. Owing to the vague character of the grants of the crown to different colonies, there was much uncertainty in regard to their boundaries. Under their original charters, Virginia, North Carolina, and Georgia maintained that their western boundary was the Mississippi River. Virginia, for example, claimed within its chartered limits country now occupied by Kentucky, Ohio, Indiana, and Illinois. Other States also laid claim to western lands. The territory ceded by the States to the general government amounted to more than the area of the thirteen original States.

**Government of the Territories.**—In order to secure the settlement of this vast tract of country, special

[1] Pomeroy, "Constitutional Law," pp. 395, 396.

inducements were offered by Congress to settlers, as, for example, grants of homesteads on condition that the land should be cultivated for a certain number of years, gifts of land for school purposes and to encourage the building of railroads. From this domain have been formed territories, and governments organized. Many of these have since become States. Although the form of territorial government has varied somewhat, the government of each territory now consists of a governor, judges, and certain other officers appointed by the President, with the advice and consent of the Senate, and a legislature composed of representatives chosen by the people. All legislation is, however, subject to the control of Congress, and it may at any time legislate for the territories, and subject their organization to any change it sees fit. The territories have no share in presidential elections, and no senators or representatives in Congress. Each territory is allowed to send a delegate to the House of Representatives, but he cannot vote. He may take part in the discussions of the House, give expression to the wishes and grievances of the people whose delegate he is, and endeavor to shape all legislation affecting the interests of his own territory.

**A Republican Form of Government Guaranteed.**—The Constitution declares that the United States shall,

1. Guarantee a republican form of government to every State in the Union;
2. Protect each State against invasion;
3. On the application of the legislature or the

> executive, when the legislature cannot be convened, protect each State against domestic violence.[1]

The aim of the first is to give permanency to republican institutions; the second provides against the danger of foreign invasion; the third guarantees aid to a State in case of domestic violence, when the State government desires protection. All are designed to suppress any tendency whatever to overthrow a republican form of government, and to substitute some other. Unless such authority were given to the national government, the liberties of the people might be destroyed by a powerful faction or by foreign aggressions, domestic violence take the place of law and order, and the safety of the Union be endangered by a successful rebellion in a single State. The incapacity of the government under the Confederation to afford aid to any one of the States in times of internal disturbance and peril was one of the causes which led to the adoption of the Constitution.

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[1] The Constitution, Article IV. sec. 4.

## CHAPTER XIII.

### THE EXECUTIVE DEPARTMENT.

**Executive Power, in whom Vested.**—All legislative power is vested in the two Houses of Congress; the judicial power, in the several United States courts; but the executive power is vested in one person, the President. To make the laws, and to decide with reference to them, require the combined wisdom of many persons; but to promptly put these laws into execution requires the exercise of a single will. It is not for the executive to decide upon the wisdom or the expediency of the laws, but when laws are made it remains for him to see that they are promptly enforced. It was a matter of considerable discussion among the framers of the Constitution, whether the responsibility of executing the laws should be intrusted to one person or to a national council. It was wisely decided that as there was danger of rivalry and discord in an executive council, and necessarily feeble and uncertain execution, this power should be intrusted to a single executive, and he should be held strictly responsible for its proper use.

**Qualifications of President.**—That a person may be eligible to the office of President, the Constitution requires,

1. That he shall be a natural-born citizen;

2. That he shall have attained the age of thirty-five years;
3. That he shall have been fourteen years a resident within the United States.

It would be unwise to intrust an office so vital to the liberties of the people to a person born in a foreign country, or even to a natural-born citizen who had not reached a mature age, and whose character was not fully developed, and generally known, by reason of faithful and continued public service. So important did it seem that this high office should be carefully guarded from all foreign influence that long absence in a foreign country was considered a disqualification. Persons born in foreign lands who were citizens of the United States at the time of the adoption of the Constitution were not ineligible to the office of President. This was in acknowledgment of the obligation of the country to the noble men who in the Revolutionary War risked their lives in defence of their adopted country.

**Term of Office.**—In the Constitutional Convention there existed much difference of opinion regarding the length of the term of office of the chief executive. A few of the delegates urged that the tenure of office should be during good behavior; the rest favored a short term, but differed as to the number of years. It was finally decided that the President should be chosen for a period of four years. This is intermediate between the term of office of senator and that of representative. Several times a President has been re-elected, but no one has been nominated or elected for a third term.

**The Vice-President.**—In hereditary monarchies, on the death of the sovereign, the executive power devolves upon the members of his family in a designated order. A fixed rule of succession is agreed upon. In our own country, a Vice-President is chosen to succeed the President in case of his removal from office, or of his death, resignation, or inability to discharge his duties. The qualifications and term of office of the Vice-President are the same as those of the President. It is manifestly proper that the same safeguards should be thrown around this office that the public safety requires to be thrown around the office of President. It is furthermore provided that Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President until the disability be removed or a President shall be elected.[1]

It is the duty of the Vice-President to preside over the deliberations of the Senate.

Congress has provided that in case of the inability of both the President and the Vice-President to act, the office of President shall devolve upon a member of the Cabinet, the order of succession being, Secretary of State, Secretary of the Treasury, Secretary of War, the Attorney-General, the Postmaster-General, Secretary of the Navy, Secretary of the Interior.

**Manner of Choosing the President.**—How the chief magistrate should be chosen long baffled the Constitutional Convention, and it was not till just before its close that a decision was ultimately reached.

[1] The Constitution, Article II. sec. 1, cl. 6.

Various plans were proposed, among these the election of the executive by the national legislature, by the people at large, by the State legislatures, by the executives of the States, and by electors. At one time the convention reluctantly decided to confer upon the national legislature the office of electing the President, but there was this grave objection, that the executive would be made dependent on the legislative branch of the government, and consequently independence of action on the part of the executive department would be destroyed. There was also an additional objection that the President would be likely to seek by bargains and compromises to conciliate members of Congress in order to secure his own re-election. It was at last decided that each State should appoint, in such manner as its legislature should direct, a number of electors equal to the whole number of senators and representatives to which the State is entitled in Congress. It will be observed that each State has the same representation in the electoral college that it has in Congress, so that the electoral college may be said to be an exact counterpart of the joint convention of the two Houses of Congress. In order to avoid the danger of undue influence on the part of the officers of the government in the election of President or Vice-President, the Constitution declares that no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.[1]

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[1]The Constitution, Article II. sec. 1, cl. 2.

1. A presidential candidate may receive a majority of the electoral votes, and yet not be the choice of a majority of the actual voters in all the States.

2. "The election of a supreme executive magistrate for a whole nation affects so many interests, addresses itself so strongly to popular passions, and holds out such powerful temptations to ambition, that it necessarily becomes a strong trial to public virtue and even hazardous to the public tranquillity."—Kent, "Commentaries on American Law," vol. i. p. 274.

**Time of Choosing Electors.**—To Congress is given the power to determine the time of choosing electors, and the day on which they shall give their votes. The day must, however, be the same throughout the United States.[1] Congress has accordingly fixed upon the Tuesday next after the first Monday in November, of every fourth year, as the time. Although it is left with the legislature of each State to designate the manner in which electors shall be appointed, it is now the custom for them to be chosen directly by the people. At first there was no uniformity in their appointment.

**Meeting of Electors.**—The electors meet in their respective States, and vote on separate ballots for President and for Vice-President, one of whom, at least, must not be an inhabitant of the same State with themselves.[2] It was not thought expedient to require the electors to travel long distances to the seat of government, for the sole purpose of casting their votes. Care has been taken to guard against the selection of President and Vice-President from

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[1] The Constitution, Article II. sec 1, cl. 4.

[2] The Constitution, Amendments, Article XII.

the same State. Originally the Constitution required that the electors should place the names of two persons on their ballots, and that the person having the greatest number of votes should be President, and the person having the next highest number should be Vice-President, provided each received a majority of the votes of the whole number of electors appointed. This was afterwards changed, by a constitutional amendment, to the present plan.

The time of meeting is the second Monday in January, following the year in which they are appointed, at such place in each State as the legislature directs.

**Certified Lists of Votes.**—The electors then make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they are required to sign and certify, and transmit sealed to the seat of government, directed to the president of the Senate.

To provide against all contingencies it is provided by act of Congress that three certificates shall be made, one to be delivered, by some one appointed by the electors for this purpose, to the president of the Senate; a second to be forwarded to him by mail; a third to be delivered to the judge of the district in which the electors assemble.

**Counting the Votes.**—The president of the Senate, in the presence of both Houses of Congress, opens all the certificates, and the votes are then counted. The person having the greatest number of votes for President is declared President, if such number is a majority of the whole number of electors appointed, and in like manner, the Vice-President. The

joint meeting of the two Houses is held in the hall of the House of Representatives.

The time for counting the votes is the second Wednesday in February succeeding the meeting of the electors.

**Failure to Elect.**—In case no one receives the required majority, either for the office of President or of Vice-President, the Constitution confers upon the House of Representatives the choice of President, and upon the Senate the choice of Vice-President. The Lower House, representing as it does the popular will, is more likely to reflect the wishes of the people at large in the selection of the President; while to the Senate naturally belongs the office of electing the Vice-President, who by virtue of his office becomes the presiding officer of that body.

**Election by the House of Representatives.** — The House of Representatives is required to choose by ballot the President from the persons having the highest numbers, not exceeding three, on the list of those voted for as President. The votes must be taken by States, the representatives from each State having but one vote, a quorum for this purpose consisting of a member or members from two thirds of the States, and a majority of all the States being necessary to a choice. If a choice is not made by the House of Representatives before the fourth of March next following, the Vice-President acts as President. The mode of voting by States was adopted to please the small States.

In the selection of the President by electors, the large States have the advantage; in an election by the House of Representatives, the small States enjoy a corresponding advantage

It must be constantly borne in mind that all through the proceedings of the Constitutional Convention there was continual strife between the delegates from the large and small States, those from the large fearing that their States would not secure that political power and influence in the Union that their population and wealth entitled them to; those from the small States fearing that their interests would be neglected or sacrificed.

**Election by the Senate.**—When the election of the Vice-President devolves upon the Senate, a choice must be made from the two persons who have received the highest number of votes on the list of those voted for as Vice-President, a quorum for this purpose consisting of two thirds of the whole number of senators, and a majority of the whole number being necessary to a choice. The senators do not vote by States, but each casts a separate vote.

**Commencement of Term of Office.**— The Congress of the Confederation, in terminating its own existence, designated the first Wednesday in March as the time when the first Congress under the Constitution should assemble. Three years afterwards, Congress, taking this time as a precedent, fixed upon the fourth of March as the beginning of the presidential term. Owing to the delay in getting the returns and counting the votes, Washington was not inaugurated until the thirtieth of April. The inconvenience and discomfort incident to the outdoor ceremonies of inauguration during the raw month of March would seem to suggest a time more favorable for such imposing ceremonies.

**Oath of Office.**—To impress the chief magistrate with the responsibilities and obligations of his high

office, he is required to take an oath to faithfully execute the duties of his office, and to preserve, protect, and defend to the best of his ability the Constitution of the United States. A solemn affirmation like this will have a tendency to make a conscientious man more careful in the performance of his duties, and will act as a check upon a man who is not governed by the highest considerations of duty. The oath of office is administered by the Chief-Justice of the United States, upon the open portico of the Capitol at Washington, under imposing and impressive surroundings, in the presence of members of both Houses of Congress, judges of the Supreme Court, ministers from foreign countries, high civil and military officials, and a great concourse of people. After the oath has been administered, the President delivers what is called his inaugural address, in which he outlines the purpose and aims of his administration.

**Compensation of the President.**—The salary of the President is fixed by act of Congress, and is at present fifty thousand dollars a year. He has also the use of the presidential mansion, called the White House, which is furnished and kept in repair, lighted and heated, at the public expense. The compensation of the chief executive can neither be increased nor diminished during his term of office. If his salary could be changed at any time by Congress, he would be dependent on its bounty, and in his public acts he might be influenced by this consideration. He is prohibited from receiving any other emolument from the United States or any of the

States. This is to place him beyond the reach of all unworthy influences, so that he may be independent of every consideration but the public good. The present service of the White House, its warming and lighting, the care of the gardens, the forage and stable service, and many other things provided for at the public expense, nearly double the President's salary.

In the Constitutional Convention, Benjamin Franklin opposed the plan of paying the President any pecuniary compensation, on the ground "that, in all cases of public service, the less profit the greater honor." He cited the example of Washington, who for eight years led the armies of the Revolution without receiving any compensation whatever for his services, to prove the practicability of "finding three or four men in the United States with public spirit enough to bear sitting in peaceful council for perhaps an equal term, merely to preside over our civil concerns, and see that our laws are duly executed." See Curtis, "History of the Constitution," vol. ii. p. 405.

**General Plan in the Selection of Officials.**—It is rather a curious fact that, of all the thousands of federal officers, only members of the Lower House of Congress are selected by a direct vote of the people. Senators are chosen by the State legislatures; the President by a college of electors; and judges and all important federal officials by the President, with the advice and consent of the Senate. The principle adopted in framing the Constitution was, that the people were to select representatives to speak for them in the selection of rulers. This principle appears in the adoption of the Constitution itself, and in the ratification of amendments.

## CHAPTER XIV.

### THE POWERS OF THE PRESIDENT.

**General Powers and Duties.**—The powers and duties of the president, as enumerated in the Constitution, are,

1. To see that the laws are faithfully executed;
2. To require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices;
3. To make appointments, and to commission the officers of the United States;
4. To command and direct the military and naval forces;
5. To grant reprieves and pardons for offences against the United States;
6. To make treaties, and to receive ambassadors and other public ministers;
7. To approve or disapprove bills passed by Congress;
8. To give to Congress information of the state of the Union, and to recommend to their consideration such measures as he may deem necessary and expedient;
9. To convene both Houses, or either of them, on extraordinary occasions, and to adjourn them in case of a disagreement be-

tween them as to the time of adjournment.

### THE EXECUTION OF THE LAWS.

**Duty of Executing the Laws.**—It is the duty of the chief executive, as the name implies, to see that the laws of the United States are faithfully executed. The prompt execution of the laws is indispensable to good government. Without this, any form of government, however good in theory, is practically worthless. The protection of property, the security of liberty itself, the happiness, good order, and safety of the people, all depend on the steady and energetic administration of the laws. This duty is, therefore, of supreme importance.

**The Cabinet.**—Nothing is said in the Constitution regarding the formation of an advisory body called the President's Cabinet. The President is authorized to require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices,[1] but no provision was made for fusing these principal officials into a council of state to advise the President regarding his policy. Some of the leading delegates in the Constitutional Convention desired to surround the President with a Cabinet to assist him in the discharge of his duties, without the power of controlling his actions; but the plan was rejected for the reason that the President of the United States was to be personally re-

[1] The Constitution, Article II. sec. 2, cl. 1.

sponsible for every official act, and that the Constitution should do nothing to diminish that responsibility, even in appearance.[1] The President cannot shield himself behind the acts or advice of a Cabinet. He alone is accountable for the proper exercise of the power conferred upon him by the Constitution. Although no provision is made in the Constitution for convening the principal executive officers as a council, it is the custom for the President to call them together at stated times, and to act upon their joint advice on all important matters. The sessions are secret, and no record is kept of the proceedings. The members of the cabinet are, Secretary of State, Secretary of the Treasury, Secretary of War, the Attorney-General, the Postmaster-General, Secretary of the Navy, Secretary of the Interior.

It was the custom of Washington to take the opinions of the heads of departments separately, and on important occasions he called them together, in the form of a council, for oral discussion. The next President, John Adams, followed about the same practice. Jefferson not only called the heads of departments together when important questions arose, but after a subject had been discussed it was submitted to a vote of his Cabinet.

**Executive Departments.**—It would be utterly impossible for the President, alone and unaided, to perform the powers and duties of his office. The practice in all well-constituted and efficient governments is to parcel out executive work among several departments, at the head of each of which is placed a chief officer. In the United States these

[1] Curtis, "History of the Constitution," vol. ii. p. 408. See note, p. 409.

heads of departments are appointed by the President, with the advice and consent of the Senate; they act in his name and under his direction, and are his confidential advisers. The work of each department is carried on by a large number of subordinate officers of various grades and functions.

The head of each department is required to make an annual report to Congress. The subjects concerning which detailed statements are required are designated by law.

**The Department of State.**—The Department of State ranks the highest in importance. It is not only the medium through which all negotiations with foreign nations are carried on, and whatever relates to foreign affairs, but it also has other, and equally important, duties to perform. It is required to preserve the original copies of all acts, resolutions, and orders of Congress; to publish and promulgate all laws passed by Congress, amendments to the Constitution, and such other matters as are required by law to be published. The Secretary of State is the custodian of the great seal of the United States, and he countersigns and affixes the seal to all executive proclamations, to various commissions, and to other executive papers. It is also through him that correspondence between the President and the governors of States is carried on.

**The Department of the Treasury.** — Next in importance to the Department of State is the Department of the Treasury, which has the management of the national finances. It superintends the collection of the revenues for the support of the government, pays out money in pursuance of appropriations

made by Congress, keeps an account of receipts and expenditures, and is responsible for the care of all public moneys. The Secretary of the Treasury has control of the erection of public buildings, the coinage of money, the custom-houses, the collection of commercial statistics, the life-saving service, marine hospitals, light-houses, beacons, and whatever relates to the security of navigation. To this department is intrusted the execution of all laws passed by Congress for the regulation of commerce and navigation. One of its most important duties is each year to submit to Congress estimates of the amount of money it will require to meet the current expenses of the government.

**The Department of War.**—The Department of War has the general oversight of the army, the military academy at West Point, arsenals, military hospitals, asylums, and prisons, military stores, and such other matters as relate to military affairs. Storm signals, weather reports, river and harbor surveys, are under the supervision of this department. The Secretary of War represents the President in his capacity as commander-in-chief of the army.

**The Department of Justice.**—The Attorney-General, who is at the head of the department of justice, acts as the legal adviser of the President and of the heads of departments. He represents the United States in all suits before the Supreme Court, and he exercises a general superintendence and direction over all United States district attorneys and marshals.

**The Post-Office Department.**—The Post-Office De-

partment has the general supervision of everything relating to the carrying of the mails, and the establishment of post-offices and postal communications.

**The Department of the Navy.**—The Department of the Navy has the general oversight of the navy, the naval academy at Annapolis, naval asylums and hospitals, navy yards and stores, and such other matters as relate to naval affairs. The naval observatory and coast survey are under the supervision of this department.

**The Department of the Interior.**—The Department of the Interior is charged with the supervision of public business relating to the census, the Indians, pensions, patents for inventions, education, public lands including mines, land surveys, and the distribution of public documents. When this department was created various duties that were previously performed by other departments were transferred to it, and as a natural result it is less homogeneous than the others.

**The Department of Agriculture.**—In addition to the departments already mentioned is a Department of Agriculture, at the head of which is a Commissioner of Agriculture. He is appointed in the same manner as the other heads of departments, but is not a member of the Cabinet. It is his duty to collect and disseminate useful information relating to agriculture, to collect and distribute new and valuable seeds and plants, and to promote the interests of agriculture and horticulture throughout the country. Skilful chemists and naturalists are employed

to gather information, to make tests, and to pursue original investigations.

### THE APPOINTMENT OF OFFICERS.

**The Power to Appoint.**—The President nominates, and, with the advice and consent of the Senate, appoints,

1. Ambassadors, other public ministers, and consuls;
2. Judges of the Supreme Court;
3. All other officers of the United States whose appointments are not in the Constitution otherwise provided for, and which shall be established by law.

But Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.[1] In order to restrain the President from practically creating offices by the power of appointment, his power is limited to offices established by law, and to those especially enumerated in the Constitution.[2] With the exception, therefore, of the President, Vice-President, members of Congress, judges of the Supreme Court, and diplomatic agents and consuls, Congress alone has the power to create offices by law, and to define the duties of each. It may prescribe conditions and qualifications, and may vest the appointment of inferior officers in the President, in the courts of law, or in

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[1] The Constitution, Article II. sec. 2, cl. 2.

[2] Curtis, "History of the Constitution," vol. ii. p. 418.

the heads of departments. When Congress has done this, its power in this direction ceases. It then remains for the President, or such other officials as may be designated by Congress, to fill the offices. All vacancies that may happen during the recess of the Senate the President has authority to fill, by granting commissions which shall expire at the end of the next session.[1] Unless provision were made for filling such vacancies, the public service might be seriously impaired. The Constitution is silent with respect to the power of removal from office, where the tenure is not fixed, but it is a recognized principle that the power of removal is incident to that of appointment.[2]

The President appoints the heads of departments, judges of the federal courts, diplomatic agents and consuls, revenue collectors, postmasters whose salaries are over $1000 a year, civil-service commissioners, military and naval officers, and all the most important government officials. The appointment of other civil officers has been vested by Congress in department officials and the courts of law. The Postmaster-General, next to the President, controls the most patronage.

**Mode of Making Appointments.** — When appointments require the consent of the Senate, it is the custom of the President to send to that body, in writing, the names of the persons whom he has selected, and the office he designs each to fill. The Senate in secret session considers the fitness of these nominations. If any one of them is rejected, he sends another name for the consideration of the Senate,

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[1] The Constitution, Article II. sec. 2, cl. 3.

[2] Ex parte Hennen, 13 Peters, p. 258.

although he may repeat his first nomination, as has sometimes happened. If a majority of the Senators approve of a nomination, the President grants a commission to the person named, as the evidence of his appointment. This is signed by the President, and to it is affixed, by the Secretary of State, the seal of the United States. The Constitution declares that the President shall commission all the officers of the United States.[1]

**Civil-Service Commission.**—As the President is held responsible for the execution of the laws, it is unquestionably proper that he should be allowed, within certain limits and under certain restrictions, to choose as his agents those having his personal confidence. The heads of departments and chief executive officers should be in harmony with the policy of his administration. It has, however, unhappily grown to be the custom for Presidents to appoint persons to office as a reward for mere party service, and to remove others from office for party opposition. As a result, unfit persons are often appointed, and meritorious officials are wantonly removed. This demoralizing practice, popularly denominated the "spoils system," which was inaugurated by Jefferson and greatly enlarged in its scope by Jackson, has been followed to a greater or less extent by all the Presidents since Jackson's time. For some time past thoughtful men, recognizing the growing character of this evil in the administration of public affairs, have sought to bring

[1] The Constitution, Article II. sec. 3.

about certain reforms in the civil service. To this end a Civil-Service Commission of three persons, not more than two belonging to one political party, is appointed by the President, with the consent of the Senate. The task of this commission is to aid the President in formulating rules and regulations for the government of the service. Applicants for certain positions are now required to pass a preliminary examination. Although the operations of this commission are somewhat limited, a decided step has been taken in the right direction.

"Washington removed nine persons, one a defaulter; Adams ten, one a defaulter; Jefferson, thirty-nine; Madison, five, three defaulters; Monroe, nine; Adams, two, both for cause. . . . Between March 4, 1829, and March 22, 1830, four hundred and ninety-one postmasters, and two hundred and thirty-nine other officers were removed, and as the new appointees changed all their clerks, deputies, etc., it was estimated that two thousand changes in the civil service took place."—Sumner, "Life of Andrew Jackson," pp. 145, 147.

### POWER OVER THE ARMY AND NAVY.

**Commander-in-Chief.**—As it is the duty of the President to execute the laws, to maintain domestic peace, and to repel invasion, some power must necessarily be placed at his disposal, which he can promptly and effectively use when necessity requires. He is accordingly placed in command of the army and navy. He is not, however, expected to take command in person of the military forces in the field, but this power is exercised through the War Department. The President is also commander-in-chief of the militia of the several States when called into the service of the United States.

**Relation of Congress to the Army and Navy.**—Congress has power to raise and support armies, maintain a navy, make rules for their government, and legislate regarding all matters that have for their object the efficiency of the service; but it has nothing whatever to do with the disposition and movements of the land and naval forces. This the President alone can do. It may decide that war shall be waged, and determine what means shall be placed at the disposal of the President to wage war, but the President, as commander-in-chief, possesses the sole authority to decide how the war shall be conducted. Only in an indirect way, by refusing to vote supplies, can Congress control the conduct of a war.

### THE PARDONING POWER.

**Reprieves and Pardons.**—After a person accused of a crime has been convicted, and sentence has been passed upon him, it sometimes happens that new testimony is discovered, which either mitigates the offence or establishes the innocence of the accused. In a case of this kind, it is evident that to some one should be intrusted the power to postpone the execution of the sentence, until what has come to light can be examined, and to remit the punishment, if the accused is found to be innocent. Then again, even when a person has committed a crime, there may be good reasons to justify the remission of the penalty, or to change the punishment into a less severe one. The power to grant reprieves and pardons for offences against the United States is closely allied to the power of executing the laws, and,

except in cases of impeachment, is conferred upon the President. It will be observed that an exception is made in cases of impeachment. When public officers offend against the laws, abuse their powers, or neglect their duties, the interests involved are so great that there should be no hinderance to their prompt removal from office.

1. A reprieve is the suspension, for a certain time, of the execution of a sentence, especially the sentence of death; a pardon is the remission of a penalty.

2. "This power of pardon will appear to be more essential, when we consider that under the most correct administration of the law men will sometimes fall a prey to the vindictiveness of accusers, the inaccuracy of testimony, and the fallibility of jurors."—Kent, "Commentaries on American Law," vol. i. p. 284.

### FOREIGN RELATIONS.

**Treaties.**—A treaty is an agreement between two or more nations. It may be an agreement of friendship or alliance, of commerce or navigation. In monarchies this power to make treaties is usually vested in the sovereign. In the United States it is confided to the President, with the restriction that all treaties must be submitted to the Senate, and to take effect must be ratified by two thirds of the senators present. The general welfare of the country is so largely affected by its relations with foreign countries that it was considered unwise to intrust so important a power wholly to one man, or even to a mere majority of the Senate. The Senate is designated, rather than the House of Representatives, for the reason that it is a more stable body, and, being composed of men of greater

experience in public affairs, is presumably better able to decide wisely with reference to our foreign interests. Treaties are negotiated by the President through the agency of resident or special ministers. The correspondence and negotiations are generally conducted secretly, and the terms of the treaty are discussed by the Senate in secret session. All treaties made under the authority of the United States are declared by the Constitution to be a part of the supreme law of the land.

Secret sessions have never been popular with the people, who naturally claim the right to know what their servants, the lawmakers, are doing. For the first five years all the sessions of the Senate were conducted with closed doors, but now the debates and proceedings are all open to the public, except when it is considering the terms of a treaty, or discussing the fitness of a nomination, or engaged in other executive business.

**Reception of Ambassadors and other Public Ministers.**—As ambassadors and other public ministers are the immediate representatives of their respective governments, they are, as such, entitled to the consideration which the dignity and importance of the office merit. It has been the custom among foreign nations to confide to the executive department the reception of the ministers of other governments, and in keeping with this general custom, the Constitution has invested the President with this important and somewhat delicate function. The minister of a foreign court first presents, in a formal manner, to the Secretary of State, his credentials, that is, the letters which show that he is the accredited representative of his government. This ceremony is performed at the Department of State.

The Secretary of State then accompanies him to the White House, and presents him to the President. Brief speeches, expressive of the kindly sentiments of the two nations, are made both by the minister and the President. As the President is the representative of the people in all diplomatic negotiations, there is an evident propriety in his receiving the diplomatic representatives of foreign governments.

**Rank of Diplomatic Agents.**—There are at present four classes of diplomatic agents, ambassadors, envoys extraordinary and ministers plenipotentiary, ministers resident, and *chargés d'affaires.* An ambassador is a diplomatic agent of the highest rank. He is accredited, that is, sent with credentials certifying his diplomatic character and rank, by one potentate to another, and represents the person of the sovereign by whom he is sent. His credentials he invariably presents in person to the sovereign, and on any fitting occasion he can claim a personal audience. He has precedence in rank and honor over all other public ministers, and on state occasions he ranks next to princes of the blood royal. Envoys extraordinary and ministers plenipotentiary are next in rank, then come ministers resident, and last *chargés d'affaires.* Envoys and ministers represent only the state, not the person of the sovereign, but they are accredited to sovereigns. They may ask for a personal interview with the king, but only as a favor, not as a right, as in the case of an ambassador. *Chargés d'affaires* are accredited to ministers of foreign affairs, and are only entitled

to transact business with them. This country does not send ambassadors to any court, and consequently American ministers in European courts are outranked by the ambassadors of second-rate powers. Likewise foreign countries do not send ambassadors to the United States. Although the titles applied to diplomatic agents differ, there is no material difference in their powers and duties. The rank has nothing to do with the transaction of affairs, but the custom of courts has attached different degrees of dignity and distinction to these titles.

Ambassadors were formerly surrounded with all the splendor and ceremony of the monarchs they represented. They were sent to their destination in ships of war. Their progress through the country was attended with profuse display, and they were surrounded with a magnificent retinue of attendants. They were allowed to stand covered in the presence of royalty, and the public audience with the sovereign to whom they were sent was a formal and solemn affair.

**Immunities and Privileges of Diplomatic Agents.**— The person of a diplomatic agent is considered sacred, and he enjoys peculiar and important privileges and immunities. He is exempted from the jurisdiction of the laws of the country in which he is sent to reside, and he is independent of any authority but that of the sovereignty he represents. He carries with him into another territory almost as entire an exemption from its laws as if he were at home.[1] The house in which he lives, and over which the flag of his country floats, is regarded as being in a certain sense outside of the country where he dis-

[1] Woolsey, "International Law," p. 148.

charges his functions, and as belonging to the country whose agent he is. Like a ship at sea, it forms part of the territory represented by the flag which he may hoist over it.[1] Persons can be married there according to the laws of their own country, no matter what the law of the land itself may be. The exemption from all local authority which the foreign minister enjoys is likewise extended to his family, his secretaries, his goods, and his domestic servants.

**The Duties of Diplomatic Agents.**—It is the duty of a diplomatic agent to keep his own government well informed of all that may concern its interests in foreign countries, protect and defend, if necessary, the persons and interests of his fellow-countrymen abroad, and maintain the most friendly relations with the government to which he is accredited. It has been jokingly said that "the first duty of an ambassador is to keep a good cook," as the exercise of liberal hospitality has much to do with the purposes of their mission. Through diplomatic representatives negotiations are carried on, treaties are arranged, and injuries are adjusted. Sometimes commissioners are appointed to adjust differences between two powers, as in the dispute between the United States and Canada over the fisheries. The settlement of the so-called Alabama claims was referred to arbitrators from five friendly nations. It is greatly to be hoped that the day is not far distant when all differences between nations,

[1] Reeve, "Encyclopædia Britannica," vol. i. p. 658.

which diplomatic agencies fail to adjust, shall be settled by arbitration, and not by an appeal to arms and the horrors of war.

**Consuls and their Duties.**—Consuls are commercial agents who reside at foreign ports, and whose duty it is to promote the commercial interests of their own nation, and care for and protect their countrymen in their commercial rights. They provide for destitute sailors belonging to the country they represent, protect those who are cruelly treated, and perform numerous other and important duties relating to the interests of merchants and seamen. Within their consulates they take care of the property left by deceased citizens, when no legal representative is at hand, and authenticate all marriages, births, and deaths of their countrymen. It is the practice of all commercial nations to have a consul at every port of importance where their citizens have established a trade. Consuls are not entitled to the privileges and immunities of diplomatic agents, but they are subject to the laws of the country where they reside, like all other members of the same nation. They have no special privileges beyond those afforded to private persons from the same country. They carry certificates of their appointment, as in the case of foreign ministers, and they must receive permission from the government where they reside before they can perform the duties pertaining to their office, within the limits prescribed. Occasionally consuls partake somewhat of the character of diplomatic agents, and in Mohammedan countries they have nearly the same rights.

1. The consular office is sometimes associated with that of minister resident. At ports where our commerce is small, foreigners are employed by the government in the capacity of consular agents.

2. "As Christian states were reluctant to expose their subjects to the operation of outlandish law and judgments, they have secured extensively by treaty to their consuls, in Mohammedan and other non-Christian lands, the function of judging in civil and even in criminal cases, where their own countrymen are concerned."—Woolsey, "International Law," p. 168.

### RELATION OF THE PRESIDENT TO CONGRESS.

**Powers Previously Mentioned.**—Mention has already been made of the veto power of the President; of his duty to give to Congress information of the state of the Union, and to recommend to their consideration such measures as he shall judge necessary and expedient; and of the authority conferred upon him to convene both Houses, or either of them, on extraordinary occasions, and in case of disagreement between them with respect to the time of adjournment, to adjourn them to such time as he may think proper.

## CHAPTER XV.

### THE JUDICIAL DEPARTMENT.

**Relation of the National Judiciary to the Other Departments.**—The third department of government is the judicial. Its powers are coextensive with those of the other two, and it is equal in dignity and authority. The legislative department, within the limits prescribed by the Constitution, makes laws, the executive carries them into effect, the judicial passes judgment upon the constitutionality of the laws and applies them to individual cases. To illustrate, the Constitution confers upon Congress the power to levy and collect duties. If there be any dispute regarding any duty levied, the executive power cannot compel its payment. It is the province of the judicial department alone to adjudicate between the government and the citizen, and to enforce the payment of whatever may be found due. If any acts passed by Congress are contrary to the manifest tenor of the Constitution, it is the duty of this department to declare them void. In the interpretation of the Constitution and the laws, the national judiciary is supreme.

**A National Judiciary Necessary.**—To allow the legislative department to be the sole judge of the constitutionality of its own acts would be unsafe. Legislative bodies, unless held in check, are liable

to usurp power and to trample on the liberties of the people. To leave to the several States the interpretation and enforcement of laws passed by Congress would give rise to various misunderstandings. The federal law would be interpreted and applied one way in one State and another way in another, and there would be little or no uniformity of decision. In order to protect public and private rights, and to secure a steady, uniform, and impartial administration of the laws, it is necessary that a national judiciary should be established, and that it should be entirely distinct from the legislative and executive departments.

"There is no liberty, if the judiciary be not separated from the legislative and executive powers."—Montesquieu.

**The Federal Courts.** — The judicial power of the United States is vested by the Constitution in one Supreme Court, and in such inferior courts as Congress may from time to time establish. The number and jurisdiction of these courts will naturally vary as the public convenience and exigencies of the country may require. In the exercise of its constitutional powers, Congress has established certain inferior courts, and defined the jurisdiction of each. These courts, together with the Supreme Court, constitute the federal judiciary. The federal courts are, a Supreme Court, Circuit Courts, District Courts, and a Court of Claims. The Supreme Court at present consists of a Chief-Justice and eight associate justices. The United States are divided into nine judicial circuits, each circuit comprising several States. The Chief-Justice and associate jus-

tices are allotted among the circuits, and for each circuit there is also appointed a circuit judge. The judicial circuits are divided into judicial districts, at least one District Court being established in each State. A district judge is appointed for each district. The Court of Claims is composed of a Chief-Justice and four associate judges. The sessions of the Supreme Court and the Court of Claims are held in Washington.

**Appointment of Judges.**—The judges of the federal courts, it will be remembered, are appointed by the President, with the advice and consent of the Senate. As the business of judicature requires the possession of a high degree of skill and knowledge, and as public and private interests are so materially affected by the decisions of these courts, it is certainly a wise provision that the Senate should be associated with the President in the appointment of judges. Improper appointments are thus less likely to be made, and less opportunity is given for the exhibition of favoritism or the exercise of personal influence. Not many men have the soundness of judgment and knowledge of law which qualify them to exercise the important functions of judge. Even when there is the requisite knowledge, the requisite integrity may be wanting. In the appointment of federal judges, no qualifications are required by the Constitution, nor does it fix the number of judges of the Supreme Court.

"Personal security and private property rest entirely upon the wisdom, the stability, and the integrity of the courts of justice." — Kent, "Commentaries on American Law," vol. i. p. 290.

**Term of Office and Compensation.**—In order to secure a wholesome independence, and a strict impartiality in the administration of the laws, the Constitution provides,

1. That the judges, both of the Supreme and inferior courts, shall hold their offices during good behavior.
2. That they shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.[1]

If judges were dependent upon the favor of the chief executive or the legislature, either for reappointment to office or for subsistence while in office, there would be constant danger of their being influenced in their official action by the desire for reappointment, or by the fear that their compensation might be lessened if their decisions were not acceptable to Congress. It is unhappily true that, in the general course of human nature, a power over a man's subsistence amounts to a power over his will.[2] To make the judges, therefore, mere dependants upon some appointing power, or upon the bounty and occasional grants of a legislative body, would be fatal to that independence of judgment which is essential to the preservation of the rights and liberties of the people.

"Laws, however wholesome or necessary, are frequently the object of temporary aversion, and sometimes of popular resistance. It is requisite that the courts of justice should be able,

[1] "The Constitution," Article III. sec. 1.

[2] Hamilton, "The Federalist," p. 583.

at all times, to present a determined countenance against all licentious acts, and to deal impartially and truly according to law, between suitors of every description, or whether the cause, the question, or the party be popular or unpopular. To give them the courage and firmness to do it, the judges ought to be confident of the security of their salaries and station."—Kent, "Commentaries on American Law," pp. 293, 294.

**Removal from Office.**—It must not, however, be supposed that judges are not responsible for their official conduct. If at any time they are found guilty of any abuse of judicial authority, they may be removed from office by impeachment. Thus, while proper safeguards have been thrown around the judiciary to protect it in the independent and conscientious discharge of its duties, the judges are not beyond the reach of the laws, but they are accountable for the abuse of their authority.

**A Comparison.** — Doubtless it has been observed that while the compensation of the President can neither be increased nor decreased during his term of office, that of the judges cannot be diminished, but may be increased. This probably arose from the difference in the duration of their respective offices. As the President is elected for only four years, it can rarely happen that an adequate salary, fixed at the commencement of his term of office, will not continue to be such to the end. But with regard to the judges, who hold their offices for life, it may well happen, especially in the early stages of the government, that a salary which would be sufficient at their first appointment, would become too small in the progress of their service.[1]

[1] Hamilton, "The Federalist," p. 584.

## CHAPTER XVI.

### THE POWERS OF THE FEDERAL COURTS.

**Judicial Power of the United States.** — The judicial power of the United States extends,

1. To all cases, in law and equity, arising under the Constitution, laws, and treaties of the United States.
2. To all cases affecting ambassadors, other public ministers, and consuls.
3. To all cases of admiralty and maritime jurisdiction.
4. To controversies to which the United States shall be a party.
5. To controversies between two or more States, between a State, when plaintiff, and citizens of another State, between citizens of different States, and between citizens of the same State claiming lands under grants of different States.
6. To controversies between a State or its citizens and foreign states, citizens, or subjects.

From the foregoing it will be seen that the jurisdiction of the federal courts extends, (1) To all cases in which federal law is involved; and (2) To all controversies in which, on account of the fact

that the parties are citizens of different States, State tribunals are not likely to act with impartiality.

1. Civil law is "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong."—Blackstone. "In the most general sense, we are accustomed to call that equity, which, in human transactions, is founded in natural justice, in honesty, and right."—Story.

2. Perhaps the most general description of a court of equity is that it has jurisdiction in cases of rights where a plain, adequate, and complete remedy cannot be had in the courts of law. It can adapt its decrees to all the variety of circumstances which may arise, and adjust them to all the peculiar rights of all the parties in interest; whereas courts of common law are bound to a fixed and invariable form of judgment, altogether absolute, for the plaintiff or for the defendant. See Story, "Commentaries of Equity Jurisprudence," pp. 21, 24.

### CASES IN WHICH FEDERAL LAW IS INVOLVED.

**Cases under the Constitution, Laws, and Treaties.**—That all cases arising under the Constitution, laws, and treaties of the United States should come within the jurisdiction of the federal courts scarcely admits of a doubt. How else could uniformity be secured in the interpretation and application of the laws, or efficiency be given to the powers of government, or treaties made obligatory on the whole nation. In all these cases the jurisdiction of the federal courts is final and conclusive.

**Appeals from the Judgments of State Courts.**—Inasmuch as the Constitution and the federal laws constitute a part of the fundamental law of each State, it must frequently happen that the State courts,

"in the exercise of their ordinary and rightful jurisdiction," will take cognizance of cases in which questions under these incidentally arise. To all such cases the judicial power of the federal government extends, and provision has been made for removing to the Supreme Court of the United States the final judgments, in these cases, of the highest court of a State. Without such provision, frequent collisions between State and national authority would occur.

**Cases Affecting Ambassadors, other Public Ministers, and Consuls.**—It would not be possible to maintain peace and friendship with other nations, unless the representatives of these governments were protected in their privileges and rights. A disregard for, or a violation of, the rights of public ministers is regarded as an insult to the sovereignty of the nation they represent, and is likely to be attended with serious consequences to the peace of the nation. Hence the necessity of referring all questions relating to the rights and privileges of ambassadors and other public ministers to the national judiciary for decision. Although consuls do not enjoy any such immunities as public ministers, cases affecting them are likewise referred to the same jurisdiction.

Congress has enacted that if any one offers violence to the person of a public minister of any foreign prince or state, or is concerned in prosecuting or arresting any such minister, or any of his domestic servants, he shall be deemed a violator of the law of nations and a disturber of the public peace, and shall be imprisoned for not to exceed three years, and fined at the discretion of the court. See "Revised Statutes of the United States," secs. 4062–4064.

**Cases of Admiralty and Maritime Jurisdiction.**—Admiralty jurisdiction includes acts and injuries done on the high seas, such as collisions and prizes taken in time of war. Under maritime jurisdiction come cases pertaining to commerce and navigation, such as suits to recover wages or money secured by a lien on the ship. The high seas are not the exclusive property of any one nation, but they belong to all nations in common, all having equal rights and jurisdiction. In the exercise of this common sovereignty on the ocean, questions affecting the rights and privileges of foreigners will frequently arise, and unless prompt justice is rendered when these rights are in question, the friendly relations of the United States with foreign nations might be jeopardized. Such cases naturally come within the jurisdiction of the federal courts, the States, as such, not being known in our intercourse with foreign nations, and not being recognized as common sovereigns of the ocean.[1] Admiralty and maritime jurisdiction is not, however, confined to cases on the high seas, but it includes acts and injuries done on the great lakes and navigable rivers. This does not divest the States of ordinary jurisdiction over inland waters. Cases of admiralty and maritime jurisdiction embrace transactions of a civil, not of a criminal nature.

"Courts of admiralty have been found necessary in all commercial countries, not only for the safety and convenience of commerce, and the speedy decision of controversies, where de-

[1] Story, "Commentaries on the Constitution," vol. ii. p. 457.

lay would often be ruin, but also to administer the laws of nations in a season of war, and to determine the validity of captures and questions of prize or no prize in a judicial proceeding."—The Propeller *Genesee Chief*, 12 Howard, p. 454.

**Controversies in which the United States is a Party.**—Controversies in which the United States is a party can only, with propriety, be referred to the federal courts. To refer such cases to the State courts would be inconsistent with the idea of national sovereignty, and would necessarily tend to lessen national authority. The rights of the United States would be entirely at the mercy of the States, and a speedy dissolution of the Union would be inevitable.

"Any government that must depend upon others for the interpretation, construction, and enforcement of its own laws is at all times at the mercy of those on whom it thus depends, and will neither be respected at home nor trusted abroad, because it can neither enforce respect nor perform obligations."—Cooley, "Principles of Constitutional Law," p. 110.

### CASES IN WHICH STATE COURTS ARE NOT LIKELY TO ACT WITH IMPARTIALITY.

**Cases Enumerated.**—It is reasonable to suppose that the national courts will be more likely than State tribunals to decide impartially, or with less bias, controversies,

1. Between two or more States, between a State and citizens of another State, between citizens of different States, and between citizens of the same State claiming lands under grants of different States;
2. Between a State or its citizens and foreign states, citizens, or subjects.

Differences will sometimes arise between States as between individuals, and unless there is an impartial court which has authority to decide finally all differences, the harmony of the States will be disturbed, and serious dissensions, and even war, might follow. It is generally conceded that no man ought to be a judge in his own cause, or in any cause in respect to which he has any interest,[1] and what is true of an individual is equally true of a State. The rights of citizens and States in the above mentioned controversies are more likely to be respected and protected by the federal courts than by local State courts. It can hardly be supposed that State tribunals will always be impartial in controversies affecting their own interests and those of their own citizens. The same is true with reference to controversies between a State or its citizens, and foreign states, citizens, or subjects.

**Suits against States.**—Owing to the general dissatisfaction occasioned by a decision of the Supreme Court that a State was suable by citizens of another State, an amendment to the Constitution was proposed by Congress and adopted by the States, which withdrew from federal jurisdiction suits against a State by citizens of another State, or by citizens or subjects of any foreign state.[2] A State can be sued by another State or by foreign states or powers, but not by citizens or subjects. Numerous suits had been brought against States by pri-

[1] Hamilton, "The Federalist," p. 591.

[2] The Constitution, Amendments, Article XI.

vate persons to compel the payment of claims. In consequence of this amendment all suits thus commenced were dismissed. States at different times have taken advantage of this provision, and neglected to meet their obligations.

### JURISDICTION OF THE SEVERAL COURTS.

**Jurisdiction Defined.**—A matter is said to be within the jurisdiction of a court when it is within the limits of its authority, and it has the power to hear and determine the case. A court is said to have original jurisdiction when it has authority to take the first steps in a suit, in other words, when a suit may commence there; and to have appellate jurisdiction when it has the power to review the decision or judgment of some other court, the court from whose decision an appeal is made being considered inferior to the court having appellate jurisdiction.

**The Supreme Court.**—The Supreme Court is the highest judicial court in the United States. Its decisions are final. From them there is no appeal. It has,

1. Original jurisdiction in all cases affecting ambassadors, other public ministers, and consuls, and in those in which a State is a party;
2. Appellate jurisdiction in all the other cases before mentioned, both as to law and fact, with such exceptions and under such regulations as Congress shall make.[1]

[1] The Constitution, Article III. sec. 2, cl. 2.

Cases affecting foreign ministers and consuls, and in which a State is a party, involve questions of such importance that they are properly referred to the highest judicial tribunal. These are the only cases in which the Supreme Court has original jurisdiction. The business of the court is mainly to review the decisions of inferior courts. It is this that gives to it most of its dignity and importance.

1. The whole appellate jurisdiction of the Supreme Court is dependent on the regulations of Congress.

2. "If several courts, co-ordinate to and independent of each other, subsist together in the country, it seems necessary that the appeals from all of them should meet and terminate in the same judicature, in order that one supreme tribunal, by whose final sentence all others are bound and concluded, may superintend and preside over the rest. This constitution is necessary for two purposes, to preserve a uniformity in the decision of inferior courts, and to maintain to each the proper limits of its jurisdiction."—Paley.

**Circuit Courts.**—The Circuit Courts of the United States have,

1. Original jurisdiction in grave offences against the laws of the United States;
2. Appellate jurisdiction over the decisions of District Courts.

Suits between citizens of different States and between aliens and citizens, when the matter in dispute exceeds the sum or value of five hundred dollars; suits under revenue, copyright, and patent laws, and where grants of different States come in question; and all crimes and offences against the laws of the United States, punishable by death or heavy penalties, are tried in these courts.

**District Courts.**—District Courts have jurisdiction of crimes and offences committed within their respective districts against the laws of the United States that are not punishable by severe penalties. Minor offences on the high seas are tried in these courts. Their jurisdiction is civil as well as criminal. Although Congress has made provision for appeals from the decision of inferior courts, many cases are finally determined in the District Courts. This is also true of the Circuit Court and the Court of Claims.

**The Court of Claims.**—It is a recognized principle in the law of nations that a sovereign state cannot be sued by an individual, except with its own consent. This attribute of sovereignty is not only inherent in the national government, but it belongs also to every State in the Union. It would therefore be impossible for any person to bring a suit against the United States, unless the national government should create a court in which claims against itself could be brought. Such a court has been established by act of Congress, called the Court of Claims. It has jurisdiction of all claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract with the government of the United States, and also of all claims referred to it for decision by either House of Congress.[1] Prior to the establishment of this court, the only means by which persons could obtain a settlement of any claims against the

[1] "Revised Statutes of the United States," sec. 1059.

government which the executive departments had refused to allow, was by petitioning Congress.

"The inconvenience of subjecting the government to perpetual suits, as a matter of right, at the will of any citizen, for any real or supposed claim or grievance, was deemed far greater than any positive injury that could be sustained by any citizen by the delay or refusal of justice. Indeed, it was presumed that it never would be the interest or inclination of a wise government to withhold justice from any citizen." — Story, "Commentaries on the Constitution," vol. ii. p. 459.

**Other Courts.**—In addition to the courts already mentioned, other courts have been created and provided for by Congress. These are territorial courts, courts-martial, and military courts. The Constitution provides also for courts of impeachment. Territorial courts have about the same powers in the territories that both State and federal courts have within the States. Courts-martial have jurisdiction of crimes and offences committed in the military and naval service. Military courts are organized in times of war, within the field of military operations, when martial law has been declared, and the ordinary courts are unable to perform their regular functions. Courts of impeachment try political offences.

"There is a great distinction, though often lost sight of, between military and martial law, the former affecting the troops or forces only, to which its terms expressly apply, equally in peace and war, by previously defined regulations; the latter extending to all the inhabitants of the district where it is in force, being wholly arbitrary, and emanating entirely from a state of intestine commotion or actual war."—Warren.

**The Trial of Crimes.**—The Constitution provides

that the trial of all crimes, except in cases of impeachment, shall be by jury, and that the trial shall be held in the State where the crimes have been committed; but when not committed within any State, that the trial shall be at such place or places as Congress may by law have directed.[1] This was subsequently amplified by the sixth amendment, and will be more conveniently treated in a subsequent chapter.

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[1] The Constitution, Article III. sec. 2, cl. 3.

## CHAPTER XVII.

### CHECKS AND BALANCES OF THE FEDERAL SYSTEM.

**Checks Required.**—One of the most eminent of American statesmen has said that the aim of every political organization ought to be, first, to obtain for rulers men who possess most wisdom to discern and most virtue to pursue the common good of society; and, secondly, to take the most effective precautions for keeping them right, while they continue to hold their public trust.[1] However pure and patriotic rulers may be, there ought to be checks so contrived as to resist the encroachments of authority, which are to be apprehended under any form of government.[2] If unerring wisdom and perfect virtue could be possessed by any one individual, a simple despotism would be the best form of government. The most effective check that has been devised is the division of the powers of government into legislative, executive, and judicial, and their assignment to different classes of officials.

**Enumeration of Checks and Balances.**—The government of the United States is a somewhat complicated system of checks and balances, carefully and skilfully arranged. These have been enumerated as follows:

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[1] Hamilton, "The Federalist," p. 434.

[2] Pomeroy, "Constitutional Law," p. 112.

1. The States are balanced against the national government.
2. The House of Representatives is balanced against the Senate, the Senate against the House.
3. The executive authority is in some degree balanced against the legislative.
4. The judicial power is balanced against the House, the Senate, the executive power, and the State governments.
5. The Senate is balanced against the President in all appointments to office, and in all treaties.
6. The people hold in their hands the balance against their own representatives, by periodical elections.
7. The legislatures of the several States are balanced against the Senate by sextennial elections.
8. The electors are balanced against the people in the choice of the President.[1]

Washington wrote of the Constitution, "It is provided with more checks and barriers against the introduction of tyranny than any government hitherto instituted among men."

**The States and the Nation.**—The jurisdiction of the national government is limited to a few objects that concern the general welfare of all the States. The State governments have control of all that relates to the ordinary business and every-day concerns of life. It was expected that the powers reserved to

[1] Letter of John Adams to John Taylor, Works, vol. vi. p. 467.

the States would serve as a check upon the increase of federal authority. Although the Constitution imposes effectual restraints upon the powers of the States, and makes the federal government the final judge of its own authority, it is within the power of the States, if the national government unwarrantably extends its jurisdiction, to limit, by constitutional amendments, its power, and even to change the structure of the government. Likewise the States may guard against any unconstitutional misuse of the law-making power, by choosing as senators and representatives persons who in making laws will avoid any encroachments upon the reserved powers of the States.

**The House of Representatives and the Senate.**—It will be remembered that a bill originating in one House must receive the approval of the other before it can become law, the two Houses acting as a check upon each other. Each branch is framed on an entirely different plan. Each represents different interests, the mode of election of each is different, and so likewise the term of office. If the members of both Houses were chosen for an equal period of time and by the same electors, but little advantage would be derived from a division into two Houses. It is certainly a wise provision that every measure must be discussed and approved by two bodies of men, combined upon a different basis, and that the interests of a majority of the States, as represented in the Senate, are balanced against the legislative power of a majority of the whole people, as represented in the House of Representatives.

**Executive Authority and Congress.**—Reference has already been made to the relation of the President to legislation, and to the natural tendency of the legislative department to encroach upon the authority of the other departments of government, and upon the rights of the people at large. The veto power was conferred upon the President as a means of defence against all depredations of the law-making power, as well as to guard against hasty and inconsiderate legislation. No measure that he deems inexpedient can become law without his assent, unless it is passed over his veto by a two thirds majority of each House. The President may likewise refuse to execute laws which he deems unconstitutional, but in so doing he renders himself liable to impeachment. The command of the revenue by Congress, and the power of Congress to prescribe rules for the executive department, are checks against executive authority. Much of executive authority comes from statute, not from the Constitution, and what is thus given may at any time be taken away. This is also true of the courts.[1]

"It is, without doubt, absolutely necessary, for securing the constitution of a state, to restrain executive power; but it is more necessary to restrain the legislative. What the former can only do by successive steps (I mean subvert the laws), and through a longer or a shorter train of enterprises, the latter can do in a moment. As its bare will can give being to laws, so its bare will can also annihilate them. . . . The former may be confined, and even is the more easily so, when undivided; the legislative, on the contrary, in order to its being restrained,

[1] Cooley, "Constitutional Law," p. 158.

should absolutely be divided."—De Lolme, "The Constitution of England," pp. 156, 157.

**The Judicial Power.**—If the judicial department, in applying the law in any controversy, finds that any legislative enactment is contrary to the manifest tenor of the Constitution, it is its duty to declare it void. All orders, commands, or warrants of the executive department, as well as all enactments of Congress, must be within the limits prescribed by the Constitution. Although the federal judiciary cannot hold the President or members of Congress responsible for exceeding their constitutional authority, it may punish the agents of their unlawful acts. It is no protection to them that they were acting under the direction of their superiors. The judicial power is therefore a very effective check upon any usurpation of power by the other departments of government. It is likewise an important check upon any encroachments of the State governments on the powers of the federal government, or any violation by the States of the rights conferred by the Constitution on its citizens. On the other hand, as most of the jurisdiction of the courts is under the control of Congress, and may be modified or taken away, as seems most expedient, the legislative department is a check upon judicial action. Also the chief executive may refuse to enforce any judgment which he believes to be in excess of the jurisdiction of the court, but always at the peril of impeachment.

"As every officer remains answerable for what he officially does, a citizen, believing that the law he enforces is incom-

patible with a superior law, the Constitution, simply sues the officer before the proper court as having unlawfully aggrieved him in the particular case. . . . The court does not decide directly upon the doings of the legislature. It simply decides, for the case in hand, whether there actually are conflicting laws, and, if so, which is the higher law that demands obedience when both may not be obeyed at the same time."—Lieber, "Civil Liberty and Self-Government," pp. 163, 164.

**The Senate and the President.**—The treaty-making power and the power to make appointments are vested in the President, but the consent of the Senate is required to give effect to either. Unwise treaties, and an improper use of executive influence and patronage, are thus guarded against. When a treaty involves the payment of money by the United States, the assent of the House of Representatives is required, as no appropriations can be made without the concurrence of both Houses. This constitutes an additional restraint on the treaty-making power.

**The People and their Representatives.** — One of the greatest securities of a free government is the responsibility of representatives to the people through periodical elections. At stated times they are compelled to appeal to public approbation, and if they usurp their powers, a remedy is obtained by the people electing more worthy representatives to annul the acts of their predecessors. Frequent elections and short terms of office are a means of holding government officials responsible for neglect of duty or abuse of authority.

"Where all power is derived from the people, and public functionaries at short intervals deposit it at the feet of the

people, to be resumed again only at their own will, individual fears may be alarmed by the monsters of imagination, but individual liberty can be in little danger."—Johnson, Ander- *v.* Dunn, 6 Wheaton, p. 226.

**The Senate and the State Legislature.**—As senators are elected by the State legislatures for a period of six years, they are responsible to the legislatures for their official acts, in the same way that members of the House of Representatives are responsible to their constituents. As there are stated times for the election of senators, the remedy for any betrayal of public trust is within the power of the State legislature.

**The Electors and the People.**—Although the election of a President and Vice-President by a college of electors was designed to guard against injudicious selections by the people at large for these important offices, the plan has fallen into disfavor, and now the electors simply register the will of the political parties they represent, by casting their votes for candidates previously nominated by their party conventions. It was the original design of the framers of the Constitution that the electors should be left free to exercise their best judgment as to the proper persons to be selected, on the ground that selections would be more judiciously made by a chosen body of men appointed for that special purpose than by the whole people. Only for the first three presidential elections was the plan, as originally intended, carried out. As a check it has proved to be of no value.

"A glimpse into the workshop of the framers of the Constitution shows how much they depended on things destined to

be transient. Impeachment is now a rusted blunderbuss. The plan of presidential electors, hailed as a means of securing independence, both of legislative cabal and the *popularis aura* [popular favor], has proved the cumbrous fifth wheel to a coach. . . . Notwithstanding the constitutional testimony against titles of nobility, 'His Excellency of the White House demands audience of' Her Majesty on her jubilee, and is the most powerful person of the two."—Conway, *Scribner's Magazine*, September, 1887.

**Impeachment of Public Officers.**—The Constitution has provided that the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.[1] Any servant of the state, whether executive or judicial, from the highest to the lowest, may at any time be called to account for official misconduct. This check Congress may interpose to the abuse of executive and judicial authority. Members of Congress are not civil officers within the meaning of this provision, and are therefore not subject to impeachment, but they are liable to expulsion. Military and naval officers are subject to trial before military courts according to the rules and usages of war.

1. "Power and strict responsibility for its use are the essential constituents of good government."—Wilson, "Congressional Government, p. 284.

2. "Nothing is more important to the stability of the state than that facility should be given by its constitution for the accusation of those who are supposed to have committed any public wrong."—Machiavelli.

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[1] The Constitution, Article II. sec. 4.

**Mode and Effect of Impeachment.**—The House of Representatives has the sole power of impeachment, the Senate the sole power to try all impeachments. The former acts as accuser, and appoints a committee of managers to conduct the prosecution; the latter, under oath, determines the guilt or innocence of the person accused. The Senate judges, the House accuses. In order to secure a conviction, a majority of two thirds of the Senators present is required. This is to prevent a combination of a mere majority to remove and disgrace a public officer who may be obnoxious to the party in power. In case of conviction, punishment is limited to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.[1] If, however, the offence for which a public officer is impeached is punishable by law, the offender may be afterwards tried by a court of law, and punishment be inflicted as in the case of any private citizen. Impeachable offences, as a general rule, are political offences; as, for example, betrayals of public interests, abuses of trust, official misconduct, neglect of duty, "which are dangerous and criminal because of the immense interests involved." When the President of the United States is impeached, the Chief-Justice presides. It would manifestly be improper for the Vice-President to preside, as his interests would be promoted by the conviction and removal of the President. Although the chief executive has power

[1] The Constitution, Article I. sec. 3, cl. 7.

to pardon offences against the United States, the pardoning power does not extend to cases of impeachment.

In England persons have been impeached for giving bad counsel to the king, and even for giving him medicine without the advice of physicians.

## CHAPTER XVIII.

### RIGHTS AND PRIVILEGES.

**Additional Guarantees.** — When the Constitution was submitted to the States for their adoption, grave objections were taken to it on account of the omission of a bill of rights, that is, a formal assertion of the fundamental rights of the people. This, it was claimed, was "a fatal defect, and sufficient of itself to bring on the ruin of the republic." On the other hand, it was maintained that as the government of the United States could only exercise such powers as were conferred upon it, and as all other powers, not positively granted to the United States by the Constitution, were reserved to the States and to the people, it was unnecessary to enumerate any of the reserved rights of the people, or to say what the government should not have a right to do. It was, however, feared that the national authority, in the exercise of powers which were necessarily given in general terms, might construe such powers to extend to certain cases that the States did not intend to fall within them. At the time of adopting the Constitution, the conventions of a number of States expressed a desire that further declaratory and restrictive clauses should be added, in order to prevent misconstruction or abuse of the powers conferred upon the government. Ac-

cordingly twelve amendments were proposed at the first session of the first Congress, ten of which were ratified by the requisite number of States. These articles declared,

1. That certain enumerated rights of the people should not be taken away or abridged (Articles I.–VIII.);
2. That the enumeration in the Constitution of certain rights should not be construed to deny or disparage others retained by the people (Article IX.);
3. That the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, were reserved to the States respectively, or to the people (Article X.).

It was claimed by some that to enumerate a certain few of the rights of the people might be construed to deny other rights that were not enumerated. The ninth amendment was designed to meet this objection.

**A Bill of Rights.**—The first eight amendments are often designated the American Bill of Rights. The phrase is borrowed from that memorable enactment known in English history as the Bill of Rights, the essential principles of which are embodied in the American Bill of Rights. These eight amendments guarantee to individuals the following fundamental rights:

1. Religious liberty;
2. Freedom of speech and of the press;
3. The right to assemble, and to petition the government;

4. The right to keep and to bear arms;
5. Security of dwelling, and of person, papers, and effects;
6. The right of private property;
7. Trial by jury in civil cases;
8. The protection of certain established forms of law, when accused of crime.

These amendments are limitations on federal authority alone, and were not intended as restrictions upon the powers of States. The national government is forbidden to deprive any citizen of the United States of any of the privileges and immunities contained in the Bill of Rights. The States are free to regulate such matters within their respective jurisdiction, and in respect to their own inhabitants, as seems best to themselves, providing no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws.[1]

Although the federal Constitution does not impose limitations on the action of the States in these matters, the constitutions of the States, without exception, contain substantially the same guarantees as those of the Constitution of the United States.

**Religious Liberty.**—Governments have repeatedly insisted upon certain forms of religious belief as a qualification for holding office, and have cruelly oppressed and persecuted persons for attempting to worship God in the manner which their belief re-

[1] The Constitution, Amendments, Article XIV. sec. 1.

quired. A particular church has been declared to be the church of the state, and special favors and advantages have been conferred upon it to the exclusion of other churches. The first amendment forbids Congress to enact any law respecting an establishment of religion or prohibiting the free exercise thereof. This prohibition does not interfere with the right and duty of the government to foster and encourage piety, religion, and morality, since these are intimately connected with the happiness of a people, and are indispensable to the well-being of the state. The government very properly recognizes its dependence on a superintending Providence, by designating days of thanksgiving and of fasting, by opening its legislative sessions by the reading of the Scriptures and by prayer, by appointing chaplains for the army and navy, and in various other ways. But it is not within the power of Congress to make any church the state church, or any religion a state religion, or to favor one religion or church more than any other. The greatest freedom in religious beliefs is guaranteed, and each individual is at liberty to worship God according to the dictates of his own conscience. Liberty of worship is one of the distinguishing features of American liberty. The Constitution furthermore declares that no religious test shall ever be required as a qualification to any office or public trust under the United States.[1]

1. As many of the original settlers in this country were obliged to leave their native land on account of their religious

[1] The Constitution, Article VI. cl. 3.

beliefs, care was taken to prohibit the United States from in any manner interfering with the religious convictions of any of its citizens.

2. In a few States persons who deny the existence of the Supreme Being are disqualified from holding any office. This is true in North Carolina, South Carolina, Mississippi, and Tennessee. Until 1858 Jews were practically excluded from Parliament by reason of each member being required to take a certain oath "upon the faith of a Christian." This, of course, a Jew could not do.

**Freedom of Speech and the Press.** — Freedom of speech and liberty of the press are necessary securities against corrupt and tyrannical governments. It is essential to the very existence of a free state that the people should at all times have the right to freely express and propagate their opinions. By freedom of speech or of the press is not meant the right to injure the standing, reputation, or business of an individual, or to publish what is blasphemous or injurious to public morals, or to advocate principles that have for their object the overthrow of the established order of government. But every citizen has the right to discuss fearlessly public measures, criticise the conduct of the government, bring to the bar of public opinion the acts of public officers, and in fact utter or publish whatever he pleases, provided it is "with good motives and for justifiable ends." The laws of all the States furnish a protection against slander and libel. Slander is the verbal attack on private character; libel is committed through the agency of the press, and the assault is more deliberate and formal and injurious.[1]

[1] Pomeroy, "Introduction to Municipal Law," p. 641.

1. "The liberty of the press is the palladium of all the civil, political, and religious rights of an Englishman."—Junius.

2. "The freedom of the press is not limited to any particular form or method of publication, but it extends to all modes of putting facts, views, and opinions before the public. Books, pamphlets, circulars, etc., are, therefore, as much within it as the periodical issues."—Cooley, "Principles of Constitutional Law," p. 282.

**Liberty of the Press of Recent Origin.**—Liberty of the press, in the same sense in which it is understood in this country and in England, is of very recent origin. Governments have considered the press to be an instrument of mischief, and have resorted to various devices to restrain it. In England censors were appointed to examine whatever was designed for publication, and without their approval no book or paper could be published. The number of printers and printing-presses was limited by law, books obnoxious to the government were publicly burned, and cruel punishments were inflicted on authors and publishers of prohibited books. To speak ill of the government was considered an offence worthy of the severest punishments. Till within a very short time, even current news of the day could not be published, if the government considered it for its interest that it should be suppressed.

1. After the Restoration, "printing was confined to London, York, and the Universities. . . . Authors and printers of obnoxious books were hung, quartered, and mutilated, exposed in the pillory and flogged, or fined and imprisoned, according to the temper of their judges: their productions were burned by the common hangman. Freedom of opinion was under interdict: even news could not be published without license."—May, "Constitutional History of England," vol. ii. p. 105.

2. In 1671 Governor Berkeley, in his report upon the con-

dition of the colony of Virginia, among other things said, "I thank God there are no free schools nor printing, and I hope we shall not have, these hundred years; for learning has brought disobedience and heresy and sects into the world, and printing has divulged them, and libels against the best government. God keep us from both."

**The Right of Assembly.**—The right of the people peaceably to assemble has never, in the United States, been called in question. Although this right includes all association for religious, social, scientific, industrial, commercial, or for any other legitimate purpose, it has more particularly in view the assembly of persons for political purposes. The frequent coming together of the people to take public matters into consideration, and to formulate the prevailing opinion on public questions, produces most beneficial effects on legislation, and helps to keep alive the spirit of self-government. Only when such assemblies contemplate public disorder, and thus endanger the safety of the state, do they become liable to suppression.

**The Right of Petition.**—The right of petition is naturally associated with the right of assembly. It has been maintained that in a republican form of government like our own, it was unnecessary to provide in the Constitution that Congress should make no law respecting the right of the people to petition the government for a redress of grievances; that the great right of petitioning would never be denied, and that its special acknowledgment "was of essential value only in a monarchy, against the encroachments of the crown." Although this right is necessarily associated with the structure and in-

stitutions of a free state, and is one of the most sacred and unquestionable rights of free citizens, nevertheless experience has demonstrated the wisdom of this provision. For many years the most heated discussions arose in Congress over this right. The presentation of petitions, by John Quincy Adams and others, bearing directly or indirectly upon slavery, was bitterly opposed by a majority of the members.

The right of petition is "a sacred right, which in difficult times shows itself in its full magnitude, frequently serves as a safety-valve, if judiciously treated by the recipients, and may give to the representatives or other bodies the most valuable information. It may right many a wrong, and the privation of it would at once be felt by every freeman as a degradation. The right of petitioning is indeed a necessary consequence of the right of free speech and deliberation, a simple, primitive, and natural right. As a privilege it is not even denied the creature in addressing the Deity."—Lieber, "Civil Liberty and Self-Government," p. 121.

**The Present System of Petitioning of Modern Origin.**—The right of petition has existed from the earliest times, but for many centuries it was restricted to the redress of personal and local grievances. It was not till the latter part of the eighteenth century (1779) that the modern right of petition, by which public matters and matters of general policy were pressed upon the attention of Parliament, had its origin. The free expression of opinion on public questions was at first but little tolerated by that assembly, and for long periods it was discountenanced and even punished. It is only within a comparatively few years that a wise and tolerant spirit has recognized liberty of opinion, and the right of

the people to express their views in the form of petitions or otherwise on all questions of general legislation.[1]

**Advantages and Abuses of the System.** — Of late years the manner of petitioning has been so systematized as to be of immeasurable service in the promotion of great public interests. In this way great influence is brought to bear upon a legislative body and public attention is aroused. It is a very efficient mode of subjecting a legislative body to the direct control of public opinion, and an admirable method of "countenancing those who desire to act and to be supported." Mainly by means of petition that agitation was commenced which resulted in the abolition of slavery in the British colonies. The right of petition has also its abuses. In the unscrupulous zeal of agents, signatures are frequently forged and multiplied, and various frauds are committed. Then again many persons, rather than refuse their signatures, inconsiderately sign their names to petitions, the object of which they are not in full sympathy with, and as a natural result petitions do not always carry with them the weight they otherwise would.

Lord Clarendon states that in 1640, "when a multitude of hands were procured, the petition itself was cut off, and a new one framed suitable to the design in hand, and annexed to the long list of names, which were subscribed to the former. By this means many men found their hands subscribed to petitions of which they before had never heard."—Clarendon, "History of Rebellion," vol. ii. p. 357.

[1] See May, "Constitutional History of England," vol. i. pp. 410–413.

**The Right to Bear Arms.**—Unprincipled rulers have repeatedly made use of standing armies to trample upon the rights of the people, and under the pretence of preventing popular insurrections and resistance to the government, have disarmed the people and forbidden them to bear arms. The maintenance of a regular force for the alleged security of the government has always been a cause of distrust to a free people, and a means of exciting alarm. The right, therefore, of a people to bear arms is one of the great safeguards of liberty, and "a strong moral check against the usurpations and arbitrary power of rulers." To guard and perpetuate this right, it is provided that inasmuch as a well-regulated militia is necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.[1] The secret carrying of arms may, however, be prohibited, as endangering the lives of citizens.

"In a land of liberty it is extremely dangerous to make a distinct order of the profession of arms. In absolute monarchies this is necessary for the safety of the prince, and arises from the main principle of their constitution, which is that of governing by fear; but in free states the profession of a soldier, taken singly and merely as a profession, is justly an object of jealousy. In these, no man should take up arms but with a view to defend his country and its laws: he puts not off the citizen when he enters the camp; but it is because he is a citizen, and would wish to continue so, that he makes himself for a while a soldier."—Blackstone, "Commentaries on the Laws of England," bk. I. p. 408.

**Security of the Dwelling, etc.**—The security of the dwelling and of person, papers, and effects is guar-

* The Constitution, Amendments, Article II.

anteed by the third and fourth amendments. The third amendment prohibits the quartering of soldiers in private houses. The fourth provides safeguards against unreasonable searches and seizures.

**Quartering Soldiers.**—One of the means frequently used by tyrannical governments to worry disaffected citizens into submission was to quarter soldiers upon them, to be fed at their expense. In this way the quiet of home was broken up, private property was appropriated without compensation, and families were subjected to a thousand annoyances from a rude and insolent soldiery. Inasmuch as standing armies are recruited to a very considerable extent from classes that have but little regard for private rights or public morals, to billet any portion of these upon citizens obnoxious to the government is a most cruel form of oppression. The attempt of England to quarter troops upon the colonies was a cause of bitter irritation, and culminated in Boston in what is known as the "Boston massacre." The prohibition that no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law,[1] protects the citizen against the exercise of this terrible instrument of oppression.

Parliament, in 1765, authorized "as many troops to be sent to America as the ministers saw fit. For these troops, by a special enactment, known as the 'Quartering Act,' the colonies in which they might be stationed were required to find quarters, fire-wood, bedding, drink, soap, and candles."—Hildreth, "History of the United States," vol. ii. p. 525.

* The Constitution, Amendments, Article III.

**Searches and Seizures.**—The fourth amendment provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and it sets forth what conditions must be fulfilled in order to justify searches and seizures. These conditions are,

1. A warrant must issue;
2. A probable cause must be shown by oath or affirmation;
3. The warrant itself must particularly describe the place to be searched, and the persons or things to be seized.

Warrants are granted by judicial officers, after a satisfactory showing is made by the complaining party, under oath, that a crime has been committed, and that there is reasonable cause to suspect that the persons or things to be seized are concealed in some specified house or place. This provision protects the liberty and property of the citizen against mere suspicion or vague accusation. Of course it does not prevent a police officer from forcing an entrance into a house and making arrests without a warrant, when a crime is being committed, or for other exceptionable cases. The person so arrested must, however, be immediately brought before a magistrate or court of competent jurisdiction, and the officer making the arrest must show good cause that the public interest required the arrest to be thus made.

"The warrant is the paper which justifies the arresting person to commit so grave an act as depriving a citizen or alien

of personal liberty."—Lieber, "Civil Liberty and Self-Government," p. 62.

**Every Man's House his Castle.**—Although it is a well-established principle of English law that every man's house is his castle, that is, every man has the right to close the door of his house against an intruder, and, if need be, use all necessary violence in defence of himself and his household, it was not till after a long and ardent struggle in England that this simple principle was established. Prior to the time of the American Revolution, officers of the government could force an entrance into any house, at any time of the day or night, open any desk, seize letters and private papers, and carry into custody suspected or obnoxious persons. One of the immediate causes of the estrangement between the American colonies and the mother country was the granting of warrants to custom-house officials to search, when and where they pleased, for smuggled goods, and to call on the by-standers to assist them. These writs to enforce obnoxious revenue-laws were bitterly opposed, and became so excessively unpopular as to be seldom used.[1]

"The poorest man may, in his cottage, bid defiance to all the force of the crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter, the rains may enter,—but the King of England cannot enter! all his forces dare not cross the threshold of the ruined tenement."—Pitt.

**Private Property.**—While it is the duty of the state to afford every possible protection to individual

[1] Hildreth, "History of the United States," vol. ii. p. 499.

property, and to guarantee the rightful and peaceful enjoyment of the same, the right is inherent in all governments to appropriate and control private property for the public benefit. Unless government possessed this right, any individual could obstruct and even put a stop to a public necessity. The government may seize and appropriate the land of the individual for the use of the state, as in the case of light-houses, docks, military roads, public buildings, and other public improvements, but whenever this is done the Constitution requires that the owner shall receive just compensation for the same. If the proper officers cannot agree with the owner on the compensation, an impartial tribunal is appointed to fix a value. The state does not decide this for itself, as it is an interested party. This power to take private property for public use is often delegated to corporations for the purpose of constructing railroads, canals, and other works of public utility. The inherent right of a state to appropriate and control individual property for the public benefit, without regard to the wishes of the owner, is designated the right of eminent domain.

"Title to property is always held upon the implied condition that it must be surrendered to the government, either in whole or in part, when the public necessities, evinced according to the established forms of law, demand."—Hogeboom.

**Jury Trial in Civil Cases.** — The Constitution, as originally adopted, provided for trial by jury in criminal, but not in civil cases, and conferred upon the Supreme Court appellate jurisdiction both as

to law and fact in cases at common law,[1] as well as in those of equity and admiralty. The omission of any express provision for trial by jury in civil cases, and the power of the Supreme Court to re-examine the facts once tried by a jury, gave much alarm, and led to the adoption of the seventh amendment. It provides,

1. That the right of trial by jury shall be preserved in suits at common law where the value in controversy exceeds twenty dollars.
2. That no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.[2]

It has been justly said that trial by jury has always been an object of deep interest and solicitude to the American people, and every encroachment upon it has been watched with jealousy.

**Suits at Common Law.**—The expression "in suits at common law" is here used in contradistinction to suits in equity and in admiralty and maritime jurisprudence, in which the right of trial by jury does not exist. This right applies to suits at common law where the value in controversy exceeds twenty dollars, and also to all criminal cases, as will be subsequently shown. In civil actions it may be waived, but not in criminal. When a person is accused of a criminal offence, he cannot waive

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[1] The Constitution, Article III. sec. 2, cl. 2.

[2] The Constitution, Amendments, Article VII.

this important privilege. "A civil suit has for its object the recovery of private or civil rights, or compensation for their infraction."

**Questions of Fact.** — After a question of fact has been decided by a jury, it cannot be re-examined except by another jury on a new trial. This is according to the rules of common law. When an appeal is made, the appellate court has nothing to do with the decision of the jury in mere matters of fact, but it has simply to decide whether an error of law has been committed. Juries pass upon the facts, judges are the interpreters of the laws. If appellate courts had the power to review facts tried by a jury, trial by jury would be a mere form and of little importance.

"The privilege of trial by jury is of great antiquity. Some writers will have it that juries were in use among the Britons, but it is more probable that this trial was introduced by the Saxons. Yet some say that we had our trial by jury from the Greeks, the first trial by jury of twelve men being in Greece." —Jacob.

**Persons Accused of Crime.**—It is a principle generally recognized by all civilized nations, though not always duly observed, that a man shall be held innocent until proved by due process of law to be guilty. Governments, like individuals, are often eager to carry a point, and the rights of the accused are liable to be disregarded. It is always difficult for an irritated power to have a due regard for the rights of an offender. Even the people themselves, when aroused by a spirit of violence and vindictiveness, are, like governments, equally in

danger of disregarding the rights of persons against whom grave offences are alleged. To fully protect the legal rights and privileges of persons accused of crime, the fifth, sixth, and eighth amendments provide,

1. That no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury;
2. That excessive bail shall not be required;
3. That the accused shall have a speedy and public trial, by an impartial jury of the State and district wherein the crime has been committed;
4. That he shall be informed of the nature and cause of the accusation, and be confronted with the witnesses against him;
5. Have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defence;
6. Not be compelled, in any criminal case, to be a witness against himself;
7. Not be punished with excessive fines, or with cruel and unusual punishments;
8. Not be subject for the same offence to be twice put in jeopardy of life and limb;
9. Not be deprived of life, liberty, or property, without due process of law.

**Grand Jury.**—The purpose of a grand jury is to protect the individual against malicious and unfounded prosecution on the part of the government. The government may accuse persons of offences,

but a body of men, a grand jury, chosen from the people, must first decide whether such persons shall be put upon trial for the alleged offences. A grand jury consists of not less than twelve and not more than twenty-three men. They sit in secret, examine the evidence against an accused person, and decide whether the accusation is sustained by the evidence. If at least twelve jurors believe that there is sufficient ground for a trial, a written accusation, called an indictment, is presented to the court. This does not apply in cases arising in the land and naval forces, or in the militia when in actual service in time of war or public danger.[1] An entirely different method of trial and punishment is required in the exigencies of war, and for the government of the army and navy, than for the protection of citizens in time of peace.

**Terms Defined.**—An indictment is a written accusation against one or more persons of an offence, presented to a grand jury by the attorney-general or other officer representing the government. If, after examining witnesses, the evidence against the persons named is sufficient to warrant a trial, the grand jury write across the indictment "a true bill;" if, on the contrary, the evidence is insufficient, they indorse on the indictment "not a true bill," or "not found." Sometimes notice is taken by a grand jury of an offence from their own knowledge or observation, without any bill of indictment being laid before them. This is designated a pre-

[1] The Constitution, Amendments, Article V.

sentment. Upon a presentment, the officer whose duty it is to prosecute must frame a bill of indictment, before the party accused can be brought to trial.[1] The phrase "infamous crime" has been held by the Supreme Court to include any crime punishable by imprisonment at hard labor for a term of years.[2]

**Difference between a Grand and Petit Jury.**—A grand jury decides whether the evidence against a person warrants his trial; a petit jury decides whether the accused is guilty or innocent of the crime alleged. The first only examines witnesses for the prosecution; the second hears the testimony for both the prosecution and the defence. A grand jury consists of not less than twelve and not more than twenty-three men; a petit jury, of twelve. A decision can be reached by a grand jury when not less than twelve jurors agree, but no result can be attained by a petit jury unless a verdict is unanimous.

"The founders of the English law have, with excellent forecast, contrived that no man should be called to answer to the king for any capital crime unless upon the preparatory accusation of twelve or more of his fellow-subjects, the grand jury; and that the truth of every accusation . . . should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbors indifferently chosen and superior to all suspicion."—Blackstone, "Commentaries on the Laws of England," bk. IV. p. 349.

**Excessive Bail.**—Although the law theoretically

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[1] Blackstone, "Commentaries on the Laws of England," bk. IV. p. 301, 302.

[2] Ex parte Wilson, 114 "United States," p. 430.

presumes that all men are innocent until proved to be guilty, some apparent contradictions necessarily arise, as when, for example, a person arrested on a criminal charge is deprived of his personal liberty until his trial can take place. To mitigate as far as possible the evils that are likely to arise in taking such steps as are necessary and proper for the protection of society, the giving of bail is practised by civilized nations. When a person is arrested for a supposed offence, one or more of his friends may become security, to a specified sum of money, for his appearance in court on the day of trial. If he fails to appear, the money is forfeited to the government. The amount of bail depends upon the seriousness of the charge and the pecuniary responsibility of the accused. What might be considered reasonable bail to a man of means, might be excessive to a poor man. A bail is excessive when it is greater than what is really necessary to secure the attendance of the accused. Under the arbitrary rule of kings such excessive bail was oftentimes required, in the case of those who had incurred the displeasure of the government, that it was impossible to procure it, and innocent persons were committed to prison, and remained there for long periods of time, during the pleasure of the king. In this way cruel wrongs were committed. Bail is not usually allowed in cases where the offence is punishable by death or imprisonment for life.

**A Speedy and Public Trial.**—It has been a favorite method of despotic rulers to defer, for a long period

of time, the trial of obnoxious persons, in order to subdue the will of their victims by long imprisonment. Trials also were conducted in secret, without the presence of the friends of the accused, and persons were condemned to suffer cruel punishments, simply to gratify the resentments of the king or his favorites. When a person is accused of a crime, he certainly is entitled to a speedy trial, and common fairness demands that the trial shall be open to the public, and opportunity given to the prisoner's friends to see that justice is impartially administered.

**An Impartial Jury.**—The jury here meant is a tribunal of twelve persons, who, under the direction of the court, listen to the evidence and render a verdict. The trial must be by an impartial jury of the State, or, if the State is divided into judicial districts, of the district wherein the crime is committed. To compel a person to be tried in another State, at an inconvenient distance from his friends and from the witnesses in his own behalf, to be subject to the unnecessary expense that such a course would require, would be an unnecessary hardship. Offences against the United States are tried in the judicial district where the offences are committed; offences against the State, in the county. It is to be presumed that in the locality where a person is known will be found those who are best qualified to judge of the credibility of the witnesses who give evidence for or against the accused, and to decide upon his guilt or innocence. In order to secure an impartial jury, either party in a suit may

object to certain persons serving as jurors, on the ground of prejudice, or for some other cause. This is called the right of challenge. A certain number of peremptory challenges are also allowed; that is, a certain number of persons may be rejected as jurors, without any reason being assigned. A unanimous verdict is required to convict or acquit. If a jury fails to agree, a new trial becomes necessary, and a new jury is summoned.

1. "Which district shall have been previously ascertained by law," is equivalent to, "which district must have been previously determined by law."—See Amendments, Article VI.

2. One of the grievances of the colonies against Great Britain, as set forth in the Declaration of Independence, was "for transporting us beyond the seas, to be tried for pretended offences."

3. "It is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbors and equals."—Blackstone, "Commentaries on the Laws of England," bk. III. p. 379.

**The Accusation and Witnesses for the Prosecution.**—It would at first thought seem superfluous to provide in the Constitution that an accused person should be informed of the nature and cause of the accusation, and be confronted with the witnesses against himself. Common fairness would seem to require such a course. When it is remembered that the government, with all its resources, is the prosecutor, and a single individual the defendant, it would be reasonable to suppose that every facility for establishing his innocence would be accorded to the accused. The experience of the past has taught a far different lesson. Persons have been frequently

imprisoned without any cause being assigned until the day of the trial, and have been kept in ignorance as to whom their accusers were. Even deceased persons have been tried for pretended crimes, found guilty, and the property inherited from them by their families confiscated.

**Witnesses and Counsel for the Defence.**—Strange as it now appears, it was long the practice in England and France not to allow a person accused of a capital offence to make use of the testimony of witnesses to establish his innocence. This right was recognized in minor offences, but it was denied in grave crimes punishable by death. It is difficult to account for the fact that in misdemeanors the accused should be allowed to exculpate himself by the testimony of witnesses, but when his life was in jeopardy he should be debarred from proofs that were allowed him in prosecutions for petty offences. It has been suggested that this monstrous custom probably arose from the active interest that the crown always took in the conviction of persons accused of capital offences, and the base subserviency of the courts to the wishes of the king. In England it is only within the present century (1836) that a person accused of a crime is entitled to the assistance of counsel for his defence. In civil cases and for misdemeanors, he was permitted the aid of counsel, but when the government charged a person with grave offences, this privilege was denied, except when legal questions arose. These the counsel for the defence was allowed to argue. The judge, it was said, stood in the relation of counsel to the

prisoner, and it was his duty to see that "the proceedings against him were legal and strictly regular." It often happened, however, that the judge perverted both the law and the evidence, while assuming to be counsel for the prisoner. It required a long struggle to extend the same rights to persons charged with criminal offences that were accorded to those charged with misdemeanors. Now an accused person is not only allowed to make any proof in his defence that he can produce by lawful witnesses, but he is entitled to have compulsory process for obtaining witnesses in his favor; that is, the court must compel such witnesses to appear at the trial and to testify. The humanity of the law has also provided that if a person is unable to employ counsel, or to meet the expense of summoning witnesses, the court shall designate some one to defend him, and shall compel the attendance of witnesses in his favor, at the expense of the government.

**Accused Persons not Required to Give Evidence.**—In France and other foreign countries, the custom of extorting a confession by the torture of the prisoner was introduced and practised. This was done on the plea "that innocence would manifest itself by a stout denial or guilt by a plain confession." It frequently happened that innocent persons, when subjected to the rack, gave evidence criminating themselves, in order to put an end to their sufferings. Even when the rack was not in use, bullying and oppressive judges frightened prisoners into admissions that criminated themselves. A person ac-

cused of a grave crime, even when innocent, labors under a serious disadvantage, and he is not likely to be in a condition of mind favorable to giving clear and convincing proofs of his innocence, when subject to an examination as a witness against himself.

The Marquis Beccaria has thus ridiculed the practice of extorting a confession by the use of the rack: "The force of the muscles and sensibility of the nerves of an innocent person being given, it is required to find the degree of pain necessary to make him confess himself guilty of a given crime."

**Excessive Fines or Cruel Punishments.**—One of the most horrible chapters in the history of criminal law is the inhuman and cruel punishments that have been inflicted on condemned persons. Human ingenuity has been taxed to the uttermost to devise atrocious and revolting punishments. Enormous fines have been imposed for slight offences, and families have been impoverished by the excessive assessments of vindictive judges who were the instruments of tyrannical rulers. It is right that the degrading and sanguinary punishments of the past should be prohibited, although there would seem to be little danger of such shocking practices in a free government like our own.

In San Francisco an ordinance was passed declaring that any male person confined in the county jail should have the hair of his head cut to within an inch of his scalp. To a Chinaman the loss of his queue was regarded not only as a disgrace, but as entailing suffering after death. This kind of punishment was declared to be unconstitutional by the Supreme Court of the United States.

**Twice in Jeopardy.**—After a person has been tried

for an offence, and a verdict of acquittal or conviction has been passed upon him, he cannot be tried a second time for the same offence. He may, after conviction, obtain a new trial if an error of law has been committed, but this is not putting him in jeopardy a second time, as it is given for his own benefit. After acquittal it is impossible for the government to secure a new trial, even though some error has been committed by judge or jury, as this would put a person twice in jeopardy. Otherwise a government might harass an obnoxious individual by repeated trials until he had spent all his substance in his own defence. In fact this has been a common means of oppression in the past. Only when a jury fails to agree on a verdict can a man be tried a second time for the same crime.

**Life, Liberty, and Property.**—The fifth amendment provides that no person shall be deprived of life, liberty, or property, without due process of law. By due process of law, or the law of the land, which are equivalent terms, is meant those fundamental principles and established maxims of law for the protection and enforcement of private rights which lie at the basis of all judicial proceedings, and which are "intended to secure the individual from the arbitrary exercise of the powers of government." A distinguished jurist has said that the words "by the law of the land" seem to mean that no member of the state shall be deprived of any of his rights and privileges, unless the matter shall be adjudged against him upon trial had according to the course of the common law. It must be ascertained judi-

cially that he has forfeited his privileges, or that some one else has a superior title to the property he possesses, before either of them can be taken from him. The words "due process of law" cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt, or determining the title to property.[1]

"By 'the law of the land' is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society."—Webster, Dartmouth *v.* Woodward, 4 Wheaton, p. 581.

**The Fifteen Amendments.** — Fifteen amendments have thus far been added to the Constitution. The first ten, as has been observed, were designed to protect more completely the liberties of the people and the rights of the States. The eleventh amendment provides that no State shall be prosecuted in the federal courts by citizens of another State or by subjects of a foreign state. The twelfth introduces a change in the cumbrous method of choosing a President and Vice-President. The last three, the result of the Civil War, were designed to abolish what was the immediate cause of the war, slavery; to protect those who were formerly slaves in their newly acquired rights; to provide against any attempt to repudiate the public debt of the United

[1] Bronson, Taylor *v.* Porter and Ford, 4 Hill, pp. 146, 147.

States, or to pay any debt or loss incurred in aid of rebellion against the national government; and to debar the United States or any State from denying or abridging the right of citizens of the United States to vote, on account of race, color, or previous condition of servitude.

"The first amendments were for the purpose of keeping the central power within due limits, at a time when the tendency to centralization was alarming to many persons; the last were adopted to impose new restraints on State sovereignty, at a time when State powers had nearly succeeded in destroying the national sovereignty."—Cooley, "Principles of Constitutional Law," p. 202.

**Conclusion.**—It is impossible to study the origin and trace the growth of the Constitution without a feeling of profound reverence for those illustrious men who so wisely laid the foundation of our present system of government amid the greatest difficulties and the most diverse and conflicting interests. It is a marvel that a constitution should be struck off at one time so well adapted to the conditions and needs of a people made up of so many different elements, with interests diametrically opposed to one another, under conditions and surroundings entirely different. The wisdom and unselfish patriotism exhibited by those to whom the important and delicate task was given of inaugurating the new government in the midst of financial distress, against the avowed opposition of no inconsiderable minority, and with a widespread feeling of suspicion and distrust among the States, entitle these distinguished patriots to the lasting gratitude

of the American people. In the spirit of forbearance and mutual concession it was established, in unforeseen embarrassments and difficulties it has been loyally sustained, in the blood of heroes it has been consecrated. In this spirit it is to be hoped that it will ever be cherished and maintained by a liberty-loving and grateful people.

### United States Government.

- President.
- Vice-President.
- Cabinet.
  - Secretary of State.
  - Secretary of the Treasury.
  - Secretary of War.
  - Attorney-General.
  - Postmaster-General.
  - Secretary of the Navy.
  - Secretary of the Interior.
- Congress.
  - Senate.
  - House of Representatives.
- Courts.
  - Supreme Court.
  - Circuit Courts.
  - District Courts.
  - Court of Claims.

### Salaries of Some Officers.

| | |
|---|---|
| President | $50,000 |
| Vice-President | 8,000 |
| Cabinet Officers | 8,000 |
| Speaker of the House of Representatives | 8,000 |
| Senators | 5,000 |
| Representatives | 5,000 |
| Chief-Justice of the Supreme Court | 10,500 |
| Associate Justices | 10,000 |
| Circuit Judges | 6,000 |
| District Judges | 3,500 to 5,000 |
| Judges of the Court of Claims | 4,500 |
| Ministers Plenipotentiary to France, Great Britain, Germany, and Russia | 17,500 |
| Ministers Plenipotentiary to Austria, China, Brazil, Italy, Japan, Mexico, and Spain | 12,000 |
| Ministers Resident | 7,500 |
| Chargés d'Affaires | 5,000 |
| Consuls | fees, 1,000 to 6,000 |

# CONSTITUTION OF THE UNITED STATES

# CONSTITUTION

OF THE

# UNITED STATES OF AMERICA.*

WE the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

## ARTICLE I.

Sec. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sec. 2. [1]The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

[2]No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[3]Representatives and direct Taxes shall be apportioned

* The Constitution is here given with the same capitalization, punctuation, and spelling as in the original instrument. At the time the Constitution was framed it was the custom to commence every noun with a capital.

among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

[4]When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such vacancies.

[5]The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Sec. 3. [1]The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

[2]Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resig-

nation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

[3]No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[4]The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5]The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6]The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

[7]Judgment in Cases of Impeachment shall not extend further than to removal from Office, and Disqualification to hold and enjoy any Office of honour, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Sec. 4. [1]The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing of Senators.

[2]The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Sec. 5. [1]Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[2]Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

[3]Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

[4]Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Sec. 6. [1]The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[2]No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Sec. 7. [1]All Bills for raising Revenue shall originate

in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2]Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3]Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and, before the Same shall take Effect, shall be approved by him, or, being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Sec. 8. [1]The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Im-

posts and Excises shall be uniform throughout the United States;

[2]To borrow Money on the credit of the United States;

[3]To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[4]To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5]To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[6]To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

[7]To establish Post Offices and post Roads;

[8]To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[9]To constitute Tribunals inferior to the supreme Court;

[10]To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

[11]To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12]To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13]To provide and maintain a Navy;

[14]To make Rules for the Government and Regulation of the land and naval Forces;

[15]To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16]To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States,

reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17]To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings;—And

[18]To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Sec. 9. [1]The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

[2]The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[3]No Bill of Attainder or ex post facto Law shall be passed.

[4]No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

[5]No Tax or Duty shall be laid on Articles exported from any State.

[6]No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

[7]No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[8]No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Sec. 10. [1]No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[2]No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

[3]No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

## Article II.

Sec. 1. [1]The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, to-

gether with the Vice President, chosen for the same Term, be elected, as follows

[2]Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two

or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.*

[3]The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[4]No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the age of thirty five Years, and been fourteen Years a Resident within the United States.

[5]In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[6]The President shall, at stated Times, receive for his Services a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[7]Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—

"I do solemnly swear (or affirm) that I will faithfully "execute the Office of President of the United States, "and will to the best of my Ability, preserve, protect "and defend the Constitution of the United States."

Sec. 2. [1]The President shall be Commander in Chief of the Army and Navy of the United States, and of the

* Altered by Amendment XII.

Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

[2]He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[3]The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Sec. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the officers of the United States.

Sec. 4. The President, Vice President and all civil

Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

## Article III.

Sec. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Sec. 2. [1]The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers, and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[2]In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[3]The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been commit-

ted; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Sec. 3. [1]Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[2]The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## Article IV.

Sec. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Sec. 2. [1]The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[2]A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[3]No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Sec. 3. [1]New States may be admitted by the Congress

into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

[2]The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Sec. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## Article V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

### Article VI.

[1]All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2]This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3]The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution: but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

### Article VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention, by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independance of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our names,

G° WASHINGTON—

*Presidt. and Deputy from Virginia,*

and by thirty-nine delegates.

## ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

### (Article I.)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### (Article II.)

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

### (Article III.)

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

### (Article IV.)

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### (Article V.)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice

put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(Article VI.)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have Compulsory process for obtaining Witnesses in his favour, and to have the Assistance of Counsel for his defence.

(Article VII.)

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

(Article VIII.)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(Article IX.)

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(Article X.)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

(Article XI.)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

(Article XII.)

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—the President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose

a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

(Article XIII.)

Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

(Article XIV.)

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several States according to their respective num-

bers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Sec. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave ; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. The Congress shall have power to enforce,

by appropriate legislation, the provisions of this article.

(Article XV.)

Sec. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of race, color, or previous condition of servitude.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

# INDEX

# INDEX.

THE END.

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